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Definitions of the ‘Particular Circumstances’ of Northern Ireland

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1 Introduction

This paper has been written to inform the Ad Hoc Committee on a Bill of Rights. The paper briefly summarises how the ‘particular circumstances’ of Northern Ireland have been described.

It is not within the scope of this paper to discuss what rights may be derived from the ‘particular circumstances’ in any Bill of Rights.

2 The ‘Particular Circumstances of Northern Ireland’

The Belfast (Good Friday) Agreement states¹:

The new Northern Ireland Human Rights Commission will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland.

This section considers what factors have been related to the ‘particular circumstances’ of Northern Ireland. Some of these circumstances have changed over time, or changed in focus. For example, since 2016, the significance of Northern Ireland sharing a land border with an EU Member State in the context of UK withdrawal has become particularly salient.

The Belfast (Good Friday) Agreement refers to issues for consideration in a Bill of Rights, as follows²:

- the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and
- a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.

The Bill of Rights Forum was divided over what constituted the ‘particular circumstances’ of Northern Ireland³. The Forum’s report noted the contrast between a broad-range interpretation of the legacy of the conflict and its impact in Northern Ireland and challenges as to which conditions are not particular to Northern Ireland.

The broader interpretation included proposals in the following areas:

- inequality and discrimination
- economic and social rights, given the impact of the conflict on health, housing, education and poverty
- rights connected to justice

¹ Belfast Agreement 1998, Rights Safeguards and Equality of Opportunity, United Kingdom Legislation, Paragraph 4: <https://www.gov.uk/government/publications/the-belfast-agreement>.

² Belfast Agreement 1998, Rights Safeguards and Equality of Opportunity, United Kingdom Legislation, Paragraph 4.

³ Bill of Rights Forum (2008), *Final Report - Recommendations to the Northern Ireland Human Rights Commission on a Bill of Rights for Northern Ireland*, Belfast: Bill of Rights Forum, pp.12-14.

- personal safety rights, because of the experience of violence and its persistence after the peace agreement in the areas of, for example, domestic violence and racist and homophobic attacks
- women's rights, evident, for example, in the low level of women's participation in public life and the higher than expected incidence of mental health issues among women in Northern Ireland.

Arguments for limitation included the following:

- Northern Ireland today is not very different from other parts of the UK
- in some respects, economic and social conditions are better in Northern Ireland than in other parts of the UK
- the terms of reference directed the Forum to making recommendations only in relation to matters that were issues of human rights concern exclusively in Northern Ireland, not in other parts of the UK, or at least to matters that were of far greater consequence in Northern Ireland
- a number of human rights issues are better addressed at a UK-wide or UK and Ireland level
- only those issues arising directly from the conflict between the two main communities and reflecting the principles of mutual respect for the identity and ethos of both communities and parity of esteem between them can be described as particular to Northern Ireland.

However, the Chair, Chris Sidoti, differentiated between what is 'particular' and what is 'unique' about Northern Ireland, and set out his analysis of what guidance can be derived from the text of the Agreement:

- The Agreement refers to 'particular', not 'unique', circumstances. Therefore, the Bill of Rights must reflect the actual situation in Northern Ireland.
- The Agreement goes some length toward setting out some of Northern Ireland's "particular circumstances". It lists five principles:
 1. Equality;
 2. mutual respect;
 3. the protection of civil, political, social, economic and cultural rights;
 4. a culture of tolerance; and
 5. non-violence.
- The Agreement also sets out a number of specific rights that must be considered part of Northern Ireland's particular circumstances. These include:

- the right of free political thought
 - the right to freedom and expression of religion
 - the right to pursue democratically national and political aspirations
 - the right to seek constitutional change by peaceful and legitimate means
 - the right to freely choose one's place of residence
 - the right to equal opportunity in all social and economic activity regardless of class, creed, disability, gender or ethnicity
 - the right to freedom from sectarian harassment and
 - the right of women to full and equal political participation.
- The Agreement also includes general references to issues that have a human rights basis:
 - equality and non-discrimination, including 'in relation to religion and political opinion, gender, race, disability, age, marital status, dependants and sexual orientation'
 - reconciliation
 - rights of victims
 - religion, language, culture and heritage
 - citizenship, nationality and minorities
 - poverty, social exclusion and economic disadvantage
 - housing
 - education
 - employment
 - criminal justice, policing and prisoners
 - political representation and participation
 - parading and the use of symbols and emblems.

The Human Rights Commission, in formulating advice to the Secretary of State on a Bill of Rights, developed a process by which the 'particular circumstances' might be considered. This process was as follows⁴:

⁴ Northern Ireland Human Rights Commission (2008), *A Bill of Rights for Northern Ireland – Advice to the Secretary of State for Northern Ireland*, Belfast: NIHRC, p.179.

- A. Are there grounds for the belief that the right has been abused, neglected or restricted by state or non-state actors in Northern Ireland to an extent greater than or in a manner distinct from any abuse, neglect or restriction in other parts of the UK?*
- B. Has the area of political, social, cultural or economic life that the proposed right covers been a cause, source or location of conflict and division between the two main communities in Northern Ireland?*
- C. Is there a reasonable apprehension that the proposed right might be violated in the future to a particularly significant extent or in a particular way compared to other parts of the UK?*
- D. Is the proposed right considered necessary or beneficial in enhancing mutual respect for the identity and ethos of both main communities and parity of esteem between them?*
- E. Does the proposed right fall under the “issues for consideration by the Commission” listed in the Belfast (Good Friday) Agreement? These are: “The formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland;” and “A clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors”.*
- F. Is the proposed right one of those which “against the background of the recent history of communal conflict”, the parties affirmed in particular in the Agreement? In its submission to the Forum, the Commission recognised that “its mandate rises from a peace agreement reached after a period of protracted conflict and a political process which established a set of principles and structures for the future governance of Northern Ireland. The mandate, when read in this general context, provides helpful guidance on the circumstances which are particular to Northern Ireland”.*
- G. Is the proposed right relevant to: i. a matter to which significant reference is made in the Agreement, or ii. one of the “general references to issues that have a human rights basis” in the Agreement?*

Appendix 1 lists the proposals in the Commission’s advice and the explanations given by the Commission as to how they reflect the ‘particular circumstances’.

The UK Government response to the Commission’s advice argued against the inclusion of certain rights on the grounds that they did not meet the criteria for the ‘particular circumstances’ of Northern Ireland. The response regarding the issue of health exemplifies this challenge⁵:

Health is one of the most important issues for individuals and communities throughout the UK, and issues in the healthcare field are discussed in the Green Paper for possible inclusion in a national Bill of Rights and Responsibilities. However, if such a

⁵ Northern Ireland Office (2009), *A Bill of Rights for Northern Ireland: Next Steps – Consultation Paper*, London: NIO, p.18.

right is to be considered as meeting the test of reflecting the particular circumstances of Northern Ireland and the principles of mutual respect for the identity and ethos of both communities, there would need to be evidence that the case for this particular right within Northern Ireland is demonstrably greater or different in nature to that in the rest of the UK, due to the particular circumstances of Northern Ireland.

Consequently, the Government agreed that aspects of eleven of the 20 areas proposed by the Commission for inclusion in a Bill of Rights reflected the 'particular circumstances' of Northern Ireland. This list is reproduced in full at Appendix 2 to illustrate what the UK Government considered what did and did not constitute the 'particular circumstances' of Northern Ireland.

Clearly, there are different perceptions as to what constitutes the particular circumstances of Northern Ireland. This raises some fundamental questions when considering a bill of rights, including the following:

- How 'particular' do circumstances have to be?
- Are only circumstances relating to the conflict to be taken into account, or can any area of particularity be taken into account, such as geography or rurality?
- Where is the comparator for this particularity?
- How are the comparative circumstances to be measured?
- Are legally enforceable rights the most effective vehicle for addressing particularities that have been identified?

The decision in 2016 of the UK to leave the European Union has the potential to impact upon Northern Ireland in ways that it does not in other parts of the UK. This dimension of 'particular circumstances' is considered in the next section.

3 Northern Ireland and the UK Withdrawal from the European Union

While the presence of an international land border has always been a factor that has set Northern Ireland apart from the rest of the UK, this has become more salient with the decision in 2016 that the UK would leave the European Union. This unique position was reflected in the negotiations for the withdrawal agreement and consequently an Ireland/Northern Ireland Protocol was concluded with the agreement to address particular issues arising out of UK withdrawal⁶.

It is not intended here to analyse the details of the Protocol, rather to look at some general issues reflecting particular circumstances associated with UK withdrawal. These have included the following:

- The constitutional position of Northern Ireland
- Identity
- Freedom of movement
- EU Human rights standards

These will be discussed in turn.

The Constitutional Position of Northern Ireland

In the UK referendum to leave or remain in the European Union in 2016, 52% of voters in the UK voted to leave, but 56% of voters in Northern Ireland voted to remain (as did a majority of the people of Scotland). This raised a question as to whether the Belfast (Good Friday) Agreement guaranteed to the people of Northern Ireland the right to be asked for their consent to any constitutional change.

It should be noted that what is referred to as the Belfast or Good Friday Agreement comprises two documents: The 'Agreement reached in the multi-party negotiations' and the 'Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland', which is presented as an annex to the document.

Article 1 of the Agreement between the Government of the UK and the Government of Ireland states that the two governments⁷:

acknowledge that while a substantial section of the people in Northern Ireland share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland, the present wish of a majority of the people of Northern Ireland, freely exercised and legitimate, is to maintain the Union and accordingly, that Northern Ireland's status as part of the United Kingdom reflects and relies upon that wish; and

⁶ Protocol on Ireland/Northern Ireland: <https://www.gov.uk/government/publications/new-protocol-on-irelandnorthern-ireland-and-political-declaration>.

⁷ Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, Article 1:iii.

that it would be wrong to make any change in the status of Northern Ireland save with the consent of a majority of its people.

In 2017, the UK Supreme Court heard a challenge to the right of the UK Government to take Northern Ireland out of the EU without a majority in Northern Ireland consenting to such a constitutional change. A majority of judges concluded⁸:

In our view, this important provision, which arose out of the Belfast Agreement, gave the people of Northern Ireland the right to determine whether to remain part of the United Kingdom or to become part of a united Ireland. It neither regulated any other change in the constitutional status of Northern Ireland nor required the consent of a majority of the people of Northern Ireland to the withdrawal of the United Kingdom from the European Union.

Identity

The Agreement between the two governments also states that they⁹:

recognise 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, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.

The salience of British and Irish citizenship has assumed greater importance in the context of UK withdrawal, because Irish citizens retain EU citizenship whereas British citizens may not. In 2019, the Upper Tribunal heard an appeal by the Home Office in relation to Emma DeSouza, who was born in Northern Ireland and was informed that, in order to assume Irish citizenship alone, she would have to renounce British citizenship, which she had been automatically given at birth. The explanation was that British citizenship is automatically acquired by qualifying people born in Northern Ireland (as in the rest of the UK) to avoid potential statelessness¹⁰.

The Upper Tribunal concluded¹¹:

Mrs De Souza objects to any suggestion that she might avail herself of section 12 by making a declaration of renunciation of her British citizenship. This is because she does not consider herself to be a British citizen and does not wish to acknowledge

⁸ R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant) REFERENCE by the Attorney General for Northern Ireland - In the matter of an application by Agnew and others for Judicial Review REFERENCE by the Court of Appeal (Northern Ireland) – In the matter of an application by Raymond McCord for Judicial Review, Judgement, 24 January 2017, Paragraph 135. [2017] UKSC 5: <https://www.supremecourt.uk/cases/uksc-2016-0205.html>.

⁹ Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, Article 1:vi.

¹⁰ John Curtis, Joanna Dawson, Georgina Sturge and Hannah Wilkins (2019), *Northern Ireland, Citizenship and the Belfast/Good Friday Agreement*, House of Commons Briefing Paper 8571, 18 October 2019, p.13: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8571>.

¹¹ [2019] UKUT 355, Paragraph 55: <https://tribunalsdecisions.service.gov.uk/utiac/2019-ukut-355>.

that she is, in order to be able to renounce that status. For the reasons we have given, however, as a matter of law, Mrs De Souza is, at present, a British citizen at the current time. Whilst we fully appreciate her strength of feeling on this matter, it is not disproportionate in Article 8 terms for her nevertheless to be required to give notice of revocation, if she wishes only to be a citizen of Ireland.

The New Decade, New Approach document states¹²:

13. The Government has reviewed the consistency of its family migration arrangements, taking into account the letter and spirit of the Belfast Agreement and recognising that the policy should not create incentives for renunciation of British citizenship by those citizens who may wish to retain it.

14. The Government will change the rules governing how the people of Northern Ireland bring their family members to the UK. This change will mean that eligible family members of the people of Northern Ireland will be able to apply for UK immigration status on broadly the same terms as the family members of Irish citizens in the UK.

15. This immigration status will be available to the family members of all the people of Northern Ireland, no matter whether they hold British or Irish citizenship or both, no matter how they identify.

In May 2020¹³, the UK Government amended the Immigration Rules¹⁴ to allow family members of people born in Northern Ireland to apply for settled status under the EU Settlement Scheme¹⁵. The change includes a 'relevant person of Northern Ireland' in the definition of an EEA citizen. A 'relevant person of Northern Ireland' is defined as a person who¹⁶:

(a) is:

(i) a British citizen; or

(ii) an Irish citizen; or

(iii) a British citizen and an Irish citizen; and

(b) was born in Northern Ireland and, at the time of the person's birth, at least one of their parents was:

(i) a British citizen; or

¹² New Decade, New Approach, Annex A, Paragraphs 13-15.

¹³ UK Government, Statement of changes to the Immigration Rules: CP 232, 14 May 2020:

<https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-cp-232-14-may-2020>.

¹⁴ UK Government, Immigration Rules, accessed 14 September 2020: <https://www.gov.uk/guidance/immigration-rules>.

¹⁵ UK Government, Apply to the EU Settlement Scheme (settled and pre-settled status), accessed 14 September 2020:

<https://www.gov.uk/settled-status-eu-citizens-families/family-member-eligible-person-from-northern-ireland>.

¹⁶ Annex 1 (Definitions) of Appendix EU: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu>.

- (ii) an Irish citizen; or
- (iii) a British citizen and an Irish citizen; or
- (iv) otherwise entitled to reside in Northern Ireland without any restriction on their period of residence

However, the British Nationality Act 1981¹⁷ remains unchanged. Section 1 of the Act states:

1 Acquisition by birth or adoption.

(1) A person born in the United Kingdom after commencement, or in a qualifying territory on or after the appointed day, shall be a British citizen if at the time of the birth his father or mother is—

- (a) a British citizen; or
- (b) settled in the United Kingdom or that territory.

Freedom of Movement

The UK withdrawal from the EU has created the particular situation where there is a land border between the UK and the EU on the island of Ireland. The Common Travel Area guarantees freedom of movement between the Republic of Ireland, Great Britain, the Isle of Man and the Channel Islands. In relation to Northern Ireland, this has maintained freedom of movement between the islands of Britain and Ireland and between Northern Ireland and the Republic of Ireland.

Following the UK withdrawal from the EU, Irish citizens will still have free movement within the Common Travel Area, but those coming from outside the region (e.g. from France to Great Britain) will be treated under the rules for other EEA nationals¹⁸. The preservation of the Common Travel Area is provided for in the Ireland/Northern Ireland Protocol to the withdrawal agreement¹⁹:

- 1. The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (the 'Common Travel Area'), while fully respecting the rights of natural persons conferred by Union law.*
- 2. The United Kingdom shall ensure that the Common Travel Area and the rights and privileges associated therewith can continue to apply without affecting the obligations of Ireland under Union law, in particular with respect to free movement to, from and*

¹⁷ British Nationality Act 1981: <https://www.legislation.gov.uk/ukpga/1981/61/contents>.

¹⁸ Terry McGuinness, Melanie Gower and Hannah Wilkins (2019), The Common Travel Area, and the special status of Irish nationals in UK law, Commons Library Briefing Paper 7661, 16 October 2019: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7661>.

¹⁹ Article 3, Protocol on Ireland/Northern Ireland.

within Ireland for Union citizens and their family members, irrespective of their nationality.

The UK and Irish Governments have published guidance to this effect²⁰.

The United Kingdom Internal Market Bill was introduced in the House of Commons on 9 September 2020²¹. Clauses 41 to 45 and Clause 50 make provisions in relation to Northern Ireland goods in the UK internal market. Critiques of those Clauses highlight detrimental impacts on the Northern Ireland Protocol²².

It is not within the scope of this paper to discuss future economic arrangements between Northern Ireland and Great Britain or Northern Ireland and the Republic of Ireland, except to highlight the particularity of Northern Ireland in the arrangements for the UK withdrawal from the EU.

EU Human Rights Standards

The EU Charter of Fundamental Rights was introduced in 2000 and entered into force with the Treaty of Lisbon in 2009²³. The Charter contains the rights of the ECHR and additional rights derived from the standards and case law of the EU. The provisions of the Charter are addressed to:

- The institutions and bodies of the EU
- The national authorities only when they are implementing EU law

While the Charter may not normally apply in the UK following withdrawal, it is unclear the extent to which EU legislation or standards would still apply, depending on nature of the future relationship the UK maintains with the EU.

Article 2 of the Ireland/Northern Ireland Protocol states:

The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.

The provisions of Union law referred to in Article 2 are listed at Appendix 3.

²⁰ UK Government, Common Travel Area Guidance, 22 February 2019: <https://www.gov.uk/government/publications/common-travel-area-guidance/common-travel-area-guidance>; Government of Ireland, the Common Travel Area, accessed 14 September 2020: <https://www.dfa.ie/brexit/getting-ireland-brexit-ready/brexit-and-you/common-travel-area/>.

²¹ United Kingdom Internal Market Bill: <https://services.parliament.uk/Bills/2019-21/unitedkingdominternalmarket.html>.

²² Philip Brien, Patrick Butchard, Graeme Cowie, John Curtis, Jonathan Finley, Georgina Hutton, Ilze Jozepa, Matt Keep, David Torrance, Dominic Webb (2020), *The United Kingdom Internal Market Bill 2019-21*, House of Commons Library Briefing Paper 9003, 11 September 2020, pp.50-65.

²³ EU Charter of Fundamental Rights, Europa website, accessed 11 July 2016: http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm.

While the Protocol guarantees no diminution of rights following withdrawal, it is unclear from the document the extent to which any changes in human rights provisions within the EU following the UK withdrawal would be reflected in Northern Ireland. However, Schedule 3 of the European Union (Withdrawal Agreement) Act 2020²⁴ provides for arrangements for the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland to monitor the implementation of Article 2 equality and human rights commitments.

²⁴ European Union (Withdrawal Agreement) Act 2020: <https://www.legislation.gov.uk/ukpga/2020/1/contents/enacted>.

Appendix 1: 'Particular Circumstances' in the Human Rights Commission Advice to the Secretary of State 2008

<i>Proposed Rights</i>	<i>Particular Circumstances</i>
The right to life	The conflict in Northern Ireland resulted in widespread and systematic violations of the right to life by state and non-state actors. As a direct consequence of the conflict 3,703 people have been killed and many more have suffered injury, illness or loss that has inevitably led to premature death. The lack of effective investigation of unsolved killings has, itself, been a source of conflict in Northern Ireland, along with cross-border aspects, including issues around the 'disappeared'. In acknowledging these concerns, the Government established the Consultative Group on the Past. This recommendation is necessary to guarantee that any mechanism intended to deal with the past is compliant with international human rights law and legislated for accordingly.
The right to liberty and security	The Belfast (Good Friday) Agreement recognised the need for normalisation and review of the criminal justice system. Reintegration of prisoners into society was a particular concern. Outside the criminal justice system, there has been an over-reliance on long-stay hospitals and resettlement has been slow compared to the rest of the UK. These recommendations will help remove a source of conflict, build confidence in the criminal justice system, and make certain that the vulnerabilities of children are effectively addressed. The distinct conditions of, and reasons for, detention and imprisonment, as well as the general treatment of suspects has led to persistent human rights concerns in Northern Ireland.
The right to a fair trial and no punishment without law	The law and practice relating to the conduct of trials has raised distinct human rights concerns in Northern Ireland. Judges and legal professionals have been intimidated and murdered. Only in Northern Ireland were defendants tried for certain offences without the right to a trial by jury. It is still the case that defendants can be tried without a jury under circumstances in Northern Ireland that are not applicable to the rest of the UK. These recommendations

	<p>will help create a fair and impartial criminal justice system in which all have confidence by providing additional protections for those involved in the trial process and guaranteeing that the vulnerabilities of children are effectively addressed.</p>
<p>The right to marry or civil partnership</p>	<p>Homosexuality was not decriminalised in Northern Ireland until 1982, 15 years after similar legislation in England and Wales. Significant opposition to the rights of gay and lesbian people and civil partnership remains in Northern Ireland. In these particular circumstances, it is necessary that the right to civil partnership and to termination of both it and marriage be given additional protection in a Bill of Rights. In contributing, with other rights, to a fully inclusive and equal society, this additional protection will help promote respect and equality.</p>
<p>The right to equality and prohibition of discrimination</p>	<p>Inequality between the two main communities and discrimination has been a source of conflict in Northern Ireland. The way in which government has responded to further inequalities suffered by individuals outside of the two main communities is also particular to Northern Ireland. For example, it has taken longer to provide equivalent protections to that in force throughout the rest of the UK. These recommendations encompass both the principles and provisions required to combat discrimination experienced by anyone in the public and private sector. They directly address the need to promote mutual respect and parity of esteem between the two main communities.</p>
<p>Democratic rights</p>	<p>In a divided society, it is necessary to protect the basic components of democracy so as to ensure that the procedures and institutions of government are reflective of the society they serve and in whose name decisions must be made. This has been affirmed in the Belfast (Good Friday) Agreement and the St Andrews Agreement. To strengthen democracy, a Bill of Rights should include guarantees that elections will be conducted in a free and fair manner, with independent electoral oversight. It should also provide assurances of inclusive and equitable government and participation in public bodies. These recommendations are fundamental to the promotion of mutual respect and parity of esteem.</p>

Education rights	<p>Schools, regardless of type, play a powerful and positive role in normalising society, helping to make it sustainable and vibrant, and enabling sharing among often divided communities. It is appropriate that a Bill of Rights includes a provision that will ensure education promotes human rights and, given the particular circumstances of Northern Ireland, mutual respect and parity of esteem for both main communities. One specific difficulty in the delivery of education has been ensuring that all children have access to the full statutory curriculum. For example, the Home Office Crime Action Plan which moves responsibility for the delivery of education to children in detention from the prison service to the Department for Children, Schools and Families does not extend or have an equivalent in Northern Ireland. A Bill of Rights should provide assurances that this will no longer be the case.</p>
Freedom of movement	<p>As recognised in the Belfast (Good Friday) Agreement, persons should have the right to freely choose their place of residence. Exceptional powers for the police service and army, the existence of peace walls and gates and the threat of sectarian violence have all restricted people's freedom of movement and residence in ways particular to this society. Given the patterns of movement and residency, and the extent to which they have impacted on individuals, there is clear need to address these concerns. A Bill of Rights should give domestic effect to the provisions of Protocol 4, Article 1 of the European Convention on Human Rights.</p>
Freedom from violence, exploitation and harassment	<p>The levels of violence and harassment suffered in Northern Ireland are unparalleled in the rest of the UK. The experience of violence was not limited to expressions of sectarianism or exclusive to the public sphere. Sectarian incidents still continue and some forms of abuse, for example, violence against women and hate crime, are increasing. The Belfast (Good Friday) Agreement acknowledges the importance of effectively tackling these issues. Sharing a land border with another European Union state makes Northern Ireland unique from the rest of the UK. It is susceptible to illicit cross-border activity including human trafficking. A Bill of Rights must protect the most vulnerable from such exploitation.</p>

<p>The right to identity and culture</p>	<p>The Belfast (Good Friday) Agreement recognises the right to British and Irish identities and citizenship, and mandated the Commission to consider for inclusion in a Bill of Rights an obligation on public authorities to respect the identity and ethos of both communities. Given the historic and continuing division between the two main communities, and the co-existence of British and Irish identities, the Commission concludes that such an obligation is necessary and desirable in order to promote mutual respect and parity of esteem. There is also need, however, to protect other linguistic, cultural and ethnic minorities so as to prevent the creation or reinforcement of a hierarchy of rights protections. These recommendations will provide necessary protection for identity and culture while recognising that, to build a stable and lasting peace, it is necessary to promote mutual respect, understanding and co-operation among all the people of Northern Ireland.</p>
<p>Language rights</p>	<p>Particular to Northern Ireland is the dispute over language rights and this has been directly related to the political conflict. The importance of respect, understanding and tolerance in relation to linguistic diversity, the Irish language, Ulster-Scots, and the languages of the various ethnic communities has been recognised in the Belfast (Good Friday) Agreement. As a party to the European Charter for Regional or Minority Languages, the Government is obliged to protect and promote Irish and Ulster-Scots. Enshrining language protections, including Sign language, within a Bill of Rights is crucial so as to ensure respect and equality for all and the promotion of parity of esteem between the two main communities.</p>
<p>The rights of victims</p>	<p>The Belfast (Good Friday) Agreement acknowledges the need to address the suffering of victims of the conflict to make this a necessary element of reconciliation. The special needs of victims have been recognised in the Programme for Government, the draft Victims and Survivors Strategy, and the appointments of the Victims Commission and the Consultative Group on the Past.</p> <p>For a long time in Northern Ireland, the focus of the criminal justice system was “directed primarily at the interests of the state in dealing with criminal behaviour and gave less</p>

	<p>attention to victims who were directly affected by criminal behaviour". The Belfast (Good Friday) Agreement has provided the underpinning for policy development and modernisation of practices in relation to the needs of victims of crime. "The status of the victims has yet to be elevated beyond past practice and a stronger focus on the individual victim's actual needs has to be developed". These recommendations will help secure confidence in a more balanced system of justice.</p>
The right to civil and administrative justice	<p>Holding public authorities to account and ensuring all reasonable requests for information are met openly and with transparency, is vital for ensuring confidence in the system of civil and administrative justice. Enabling members of the public to review the stewardship of public funds and the extent to which key government objectives have been met is central to the operation of democratic institutions. A Bill of Rights should include such guarantees given the contested nature of political and public life in Northern Ireland.</p>
The right to health	<p>The conflict has directly impacted on the health of the people of Northern Ireland. Loss of life, injury and trauma has had a profound effect on the physical and mental health of individuals and their families. The secondary effects, often involved, reduced standards of life for dependents with the Government acknowledging that there is a correlation between poor health and high levels of violence. The Government has recognised that the overall health status of the population requires attention and it has set itself a programme of action to reduce health inequalities in Northern Ireland. One strategic objective in health planning is to ensure the use of gender-sensitive decision-making and access to appropriate services. A Bill of Rights should ensure that no one will be denied emergency and essential healthcare. It should also ensure the ongoing improvement of the provision and accessibility of services.</p>
The right to an adequate standard of living	<p>The Government has acknowledged that grievances concerning social and economic discrimination had substantial foundation in Northern Ireland. The Belfast (Good Friday) Agreement recognises that tackling economic disadvantage and promoting social inclusion are key components of building a lasting peace. The Government</p>

	<p>has also stated that it is committed to “proactively change the existing patterns of social disadvantage by using increased prosperity and economic growth to tackle ongoing poverty”. Such a commitment should be enshrined in a Bill of Rights. The Government should also guarantee immediate protection for the most vulnerable and marginalised members of society.</p>
The right to accommodation	<p>Segregated patterns of residency caused by intimidation remain a problem in Northern Ireland, and discrimination in the allocation of social housing was a contributing factor in the conflict. Addressing the first of these issues, and enshrining a guarantee that the second will not reoccur, is fundamental to promoting mutual respect and parity of esteem between the both main communities. It is essential that a Bill of Rights places a duty on relevant government agencies to allocate housing without discrimination. Increasing social and affordable housing is one important aspect of delivering this outcome. However, it is also crucial that agencies protect persons from intimidation and harassment in their own homes and provide emergency shelter for those in need.</p>
The right to work	<p>Exclusion from, and discrimination in, employment contributed to the conflict in Northern Ireland. Separated labour markets, intimidation in the workplace and sectarian discrimination were, and remain, particular to this society. The Belfast (Good Friday) Agreement contained a commitment to “combating unemployment and progressively eliminating the differential in unemployment rates between the two communities by targeting objective need”. These Recommendations will ensure that a Bill of Rights guarantees the opportunity for equal access to work under just and favourable conditions, including respite for carers, since they can be seen as requisites to addressing discrimination and social disadvantage. Where just and favourable conditions are not safeguarded, it is necessary that workers are protected in a Bill of Rights so that they can engage with employers or withdraw their labour to ensure rights protections.</p>
Environmental rights	<p>Environmental protection in Northern Ireland has suffered from underinvestment. Northern Ireland is the only part of</p>

	<p>the UK not to have an independent environmental regulator. Environmental protection is also different because of the unique circumstance in sharing a land border with another European Union state. This is recognised in the Belfast (Good Friday) Agreement by the provision for a North-South Ministerial Council, the responsibilities of which include protection of the environment, pollution control, water quality, and waste management. The Government recognises it is vitally important to protect the environment, not only to promote Northern Ireland as a place to live, work and visit, but also in enhancing wellbeing and the quality of life for everyone. Provisions are needed in a Bill of Rights in order to protect and enhance the environment for present and future generations.</p>
Social security rights	<p>Northern Ireland has had different welfare provisions from elsewhere in the UK. These were based on residency requirements to reflect its unique geographical location in sharing a land border with another sovereign jurisdiction. Special measures were also introduced to deal with debt recovery following refusals to pay rent and rates as a form of political protest. Both, the Belfast (Good Friday) Agreement and the St Andrews Agreement make reference to issues of social exclusion and economic disadvantage and the need to address these. The particular circumstances of Northern Ireland have led to a high proportion of people receiving out-of-work benefits, high numbers of people without paid work, or in low paid work, and high numbers of people receiving Disability Living Allowance for mental health reasons. There is also a recognised and substantive correlation between those areas most directly impacted by the conflict and levels of relative poverty. For these reasons, Northern Ireland requires the inclusion of social security protections in a Bill of Rights.</p>
Children's rights	<p>The trans-generational impact and continuing legacy of the conflict has had serious consequences for children in Northern Ireland. Almost 300 children were killed and thousands were affected as a result of having family and friends injured, killed or imprisoned. There is now evidence of trauma affecting the children of those who grew up during the conflict. Children were abused by both state and non-state actors, and some were subject to so-called</p>

	<p>punishment violence by armed groups. One of the most explicit differences between the lives of children in Northern Ireland compared to the rest of the UK is the lasting impact of segregation within communities, housing, education, play and leisure facilities. In order to repair the damage of the past and protect future generations, it is of significant importance that children in Northern Ireland are afforded additional protections. Ensuring a common system of protection of the rights for all our children will, together with other rights, promote mutual respect and parity of esteem between the two main communities.</p>
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Appendix 2: UK Government Response to the Human Rights Commission's Advice on a Bill of Rights

Points marked with an asterisk (*) were considered to relate to the 'particular circumstances of Northern Ireland.

1*	<p>The right to life</p> <p>1.1.* Legislation must be enacted to ensure that all violations of the right to life relating to the conflict in NI are effectively investigated. Any mechanisms established must be fully in compliance with international human rights law.</p>
2*	<p>The right to liberty and security</p> <p>Provisions should be drafted to ensure the incorporation in a Bill of Rights for Northern Ireland of –</p> <p>The Fourth Protocol, Article 1 of the European Convention on Human Rights, which declares:</p> <p>No one shall be deprived of his liberty merely on the ground of the inability to fulfil a contractual obligation.</p> <p>2.1.* Everyone who is arrested or detained has the right to consult promptly and privately with a legal representative and of prompt access where appropriate to a medical practitioner.</p> <p>2.2.* Everyone who is arrested or detained has the right to be visited by a family member under appropriate supervision.</p> <p>2.3.* Everyone who is questioned under arrest has the right to have a legal representative present during the questioning and to have it aurally and visually recorded.</p> <p>2.4.* Public authorities must take all appropriate measures to reintegrate into society those in detention or alternative care by providing support, prior to and after discharge, towards independent living.</p> <p>2.5. Every child or vulnerable adult who is questioned under arrest, held in detention without charge, or being charged, has the right to have a legal representative and appropriate adult present to represent their best interests.</p> <p>2.6. Every child alleged to, accused of, or proven to have infringed the criminal law has the right to be treated in a manner that pays due regard to the child's age, understanding, and needs and is directed towards the child's reintegration in society.</p> <p>2.7. Every child has the right not to be detained except as a measure</p>

	<p>of last resort, in which case, the child may be detained only for the shortest appropriate period of time, and has the right to be:</p> <p>a) kept separately from detained persons over the age of 18 years; and</p> <p>b) treated in a manner, and kept in conditions, that pays due regard to the child's age.</p> <p>2.8. No child in the criminal justice system shall be subject to the use of force or methods of restraint unless it is absolutely necessary to avoid serious injury to the child or another person.</p>
3*	The right to a fair trial and no punishment without law
	<p>3.1.* Everyone has the right to trial by jury for serious offences and the right to waive it.</p> <p>3.2. Evidence obtained through torture or inhuman and degrading treatment must be excluded. Evidence obtained through breach of any other right in a Bill of Rights for Northern Ireland must be excluded, unless it is established that the admission of the evidence would not render the trial unfair or otherwise be detrimental to the administration of justice.</p> <p>3.3. In the case of children and vulnerable adults, accused of a criminal offence, the procedures must be such so as to pay due regard to their age, their understanding and the desirability of promoting their rehabilitation.</p> <p>3.4.* Every witness has the right, prior to and after giving evidence, to protection and support as is appropriate to their needs as witnesses.</p> <p>3.5.* Every juror has the right to such protection and support as to allow them to fulfil their role properly.</p> <p>3.6.* Every member of the judiciary and legal profession has the right to such protection as to allow them to perform their duties properly.</p>
4	The right to marry or civil partnership
	<p>4.1. Everyone who is married has the right to legal termination of marriage in accordance with the laws governing the exercise of this right.</p> <p>4.2. Everyone has the right to enter civil partnership and the right to legal termination of civil partnership in accordance with the laws governing the exercise of these rights.</p>
5*	The right to equality and prohibition of discrimination
	<p>5.1.* 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.</p>

	<p>5.2.* No one shall be unfairly discriminated against by any public authority on any ground such as: race, membership of the Irish Traveller community, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender, identity, age, disability, health status, generic or other predisposition toward illness, irrelevant criminal record, property or a combination of any of these grounds, on the basis of characteristics associated with any of these grounds, or any other status.</p> <p>5.3.* Unfair discrimination consists of any provision, criterion or practice which has the purpose or effect of impairing the ability of any person to participate on an equal basis with others in any area of economic, social, political, cultural or civil life.</p> <p>5.4.* Without prejudice to the immediate effect of Recommendations on the Right to Equality and Prohibition on Discrimination, legislation must be enacted to prevent or prohibit unfair discrimination.</p> <p>5.5.* Public authorities must take all appropriate measures to eliminate unfair discrimination, and where circumstances so warrant and in accordance with the law, must take all appropriate and proportionate measures to ameliorate the conditions of disadvantaged groups, including those individuals or groups disadvantaged because of the prohibited grounds in Recommendation 2.</p> <p>5.6.* Nothing in a Bill of Rights for Northern Ireland shall preclude any law, programme or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those individuals or groups disadvantaged because of the prohibited means of achieving this objective.</p> <p>5.7. Public authorities must take all appropriate measures to promote the rights of older persons and those who are disabled to lead a life of independence, enjoy social, cultural and occupational integration, and to participate in the life of the community.</p>
6*	Democratic rights
	<p>6.1.* Everyone has the right and the opportunity, without any of the distinctions mentioned in Recommendation 2 of the Right to Equality and Prohibition on Discrimination section of this advice and without unreasonable restriction, to take part in the conduct of public affairs, direct or through freely chosen representatives; to vote and to be elected at genuine periodic elections, which must be by universal and equal suffrage, and must be held by secret ballot, guaranteeing the free expression of the will of the electors.</p> <p>6.2. Everyone has the right to have access, on general terms of</p>

	<p>equality, to public service.</p> <p>6.3.* Elections must be subject to proportional representation at both regional and local level.</p> <p>6.4.* A Bill of Rights for Northern Ireland recognises the safeguards contained in the Belfast (Good Friday) Agreement 1998 for inclusive, proportionate and equitable participation in regional government and recommends, by means to be determined in legislation, equivalent safeguards for local government.</p> <p>6.5.* Public authorities must take effective measures to facilitate the full and equal participation of women in political and public life, including, where appropriate, the use of temporary special measures.</p> <p>6.6.* The membership of public bodies must as far as practicable be representative of society in Northern Ireland.</p> <p>6.7.* There must be an independent electoral authority to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with laws which are compatible with a Bill of Rights for Northern Ireland.</p>
7	Education rights
	<p>7.1. Education in all its forms must be directed towards the promotion of human rights, equality, dignity of the person, respect for diversity and tolerance.</p> <p>7.2. No child shall be denied the right to access the full Northern Ireland education curriculum.</p>
8	Freedom of movement
	<p>The Fourth Protocol Article 2 (1,4) of the ECHR should be incorporated in a Bill of Rights for Northern Ireland, which declares:</p> <p>1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.</p> <p>4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.</p>
9*	Freedom from violence, exploitation and harassment
	<p>9.1.* Everyone has the right to be free from all forms of violence and harassment, from either public or private sources, including but not limited to:</p> <p>a) domestic violence or harassment;</p> <p>b) sexual violence or harassment;</p> <p>c) gender-related violence or harassment;</p>

	<p>d)* sectarian violence or harassment; and</p> <p>e) violence or harassment motivated by hate on any prohibited ground of discrimination.</p> <p>9.2. Everyone has the right to be protected from sexual exploitation and sexual and other forms of trafficking.</p> <p>9.3.* Public authorities must take all appropriate measures to ensure protection of the rights in Recommendations 1 and 2.</p>
10*	The right to identity and culture
	<p>10.1.* The right of the people of Northern Ireland to identify themselves and be accepted as Irish or British or both, as they may so choose, with no detriment or difference of treatment of any kind. This right would not be affected by any future change in the status of Northern Ireland.</p> <p>10.2.* The right of the people of Northern Ireland to hold British or Irish citizenship or both in accordance with the laws governing the exercise of this right, with no detriment or differential treatment of any kind. This right would not be affected by any future change in the status of Northern Ireland.</p> <p>10.3.* Public authorities must fully respect, on the basis of equality of treatment, the identity and ethos of both main communities in Northern Ireland. No one relying on this provision may do so in a manner inconsistent with the rights and freedoms of others.</p> <p>10.4. Everyone belonging to a national, ethnic, religious, linguistic or cultural minority in Northern Ireland has the right, individually and in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public. No one exercising these rights may do so in a manner inconsistent with the rights and freedoms of others.</p> <p>10.5.* Public authorities must encourage a spirit of tolerance and dialogue, taking effective measures to promote mutual respect, understanding and co-operation among all persons living in Northern Ireland, irrespective of those persons' race, ethnicity, language, religion or political opinion.</p> <p>10.6.* No one may be compelled in Northern Ireland to take an oath, or to take an oath in a manner, that is contrary to their religion or belief, or that requires them to express a belief that they do not hold.</p>
11*	Language rights
	<p>11.1. Everyone belonging to a linguistic minority has the right to learn or be educated in and through their minority language where there are substantial numbers of users and sufficient demand.</p>

	<p>11.2. Everyone has the right to access services essential to life, health or security through communication with a public authority, assisted by interpretation or other help where necessary, in a language (including sign language) and a medium that they understand.</p> <p>11.3.* Public authorities must, as a minimum, act compatibly with the obligations undertaken by the UK Government under the European Charter for Regional or Minority Languages in respect of the support and development of Irish and Ulster-Scots.</p>
12*	The rights of victims
	<p>12.1. Every victim of crime has the right to appropriate material, medical, psychological and social assistance.</p> <p>12.2. Every victim of crime has the right to be informed about the progress of the investigation and relevant legal proceedings.</p> <p>12.3.* Legislation must be enacted to recognise all the victims of the Northern Ireland conflict and to ensure that their rights are protected. These rights include rights to redress and to appropriate material, medical, psychological and social assistance.</p>
13	The right to civil and administrative justice
	<p>13.1. Everyone has the right of access to any information held by public authorities, in accordance with laws governing the exercise of this right.</p> <p>13.2. Everyone has the right to administrative action that is lawful, procedurally fair, rational, proportionate and taken within a reasonable time.</p> <p>13.3. Public authorities must give reasons for their decisions and, where feasible, provide appropriate mechanisms for internal review or appeal of their decisions.</p>
14	The right to health
	<p>14.1. Everyone has the right to the highest attainable standard of physical and mental health. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.</p> <p>14.2. No one shall be refused emergency medical treatment and essential primary healthcare.</p> <p>14.3. Everyone has the right to appropriate healthcare and social care services free at the point of use and within a reasonable time. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.</p>

	14.4. Women and girls have the right to access gender-sensitive and appropriate healthcare services and information.
15	The right to an adequate standard of living
	15.1. Everyone has the right to an adequate standard of living sufficient for that person and their dependents. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right. 15.2. No-one shall be allowed to fall into destitution.
16*	The right to accommodation
	16.1. Everyone has the right to adequate accommodation appropriate to their needs. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right. 16.2.* No one may be forced out of their home by threats or harassment or evicted without an order of a court. Public authorities must take all appropriate measures to ensure the protection of this right. 16.3. Everyone has the right to appropriate emergency accommodation.
17	The right to work
	17.1. Everyone has the right to work, which includes the right to the opportunity to gain their living by work which they freely choose or accept. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right. 17.2. Everyone has the right to enjoyment of just and favourable conditions of work irrespective of the status of the worker, including: a) remuneration which provides all workers, as a minimum with: i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular, women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; ii) decent living for themselves and their families; b) safe and healthy working conditions; c) freedom from all forms of unfair discrimination and from harassment including taking all appropriate measures to eliminate discrimination against women in the field of employment, including on the grounds of pregnancy or maternity; d) rest, leisure and reasonable limitation of working hours and periodic

	<p>holidays with pay, as well as remuneration for public holidays.</p> <p>17.3. Workers have the right to strike and the right to engage in collective bargaining.</p> <p>17.4. Everyone with caring responsibilities has the right to appropriate respite from those responsibilities. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.</p>
18	Environmental rights
	<p>18.1. Everyone has the right to have the environment protected so as to foster the health and well-being of present and future generations, while promoting justifiable economic and social development.</p> <p>18.2. Public authorities must adopt legislative and other measures to:</p> <ul style="list-style-type: none"> a) limit pollution and ecological degradation; b) promote conservation and biodiversity; and c) secure the sustainable development and use of natural resources.
19	Social security rights
	<p>19.1. Everyone has the right to social security, including social assistance, social insurance and pension. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.</p>
20*	Children's rights
	<p>20.1. For the purpose of benefiting from any of the specific rights of the child in a Bill of Rights for Northern Ireland, a child means every human being below the age of eighteen years.</p> <p>20.2. The rights in a Bill of Rights for Northern Ireland must be guaranteed to every child, without discrimination on any of the grounds listed in Recommendation 2 of the Right to Equality and Prohibition on Discrimination, whether the ground of discrimination applies in respect of the child or the child's parents or legal guardians.</p> <p>20.3. Public authorities must ensure that, in all actions concerning the child, whether undertaken by public authorities or private institutions, the best interests of the child shall be the primary consideration. In adoption, or any other child placement proceedings, the best interests of the child shall be the paramount consideration.</p> <p>20.4. Public authorities must take all appropriate measures to ensure the right of every child to access safe and appropriate play and leisure facilities.</p> <p>20.5. Every child who is temporarily, or permanently, deprived of his or</p>

her family environment has the right to special protection and assistance for as long as they need it.

20.6. Public authorities must take all appropriate legislative, administrative, social and educational measures to protect every child from all forms of violence, maltreatment, neglect, exploitation and harassment.

20.7. Public authorities must take all appropriate measures to ensure the right of every child to be informed of their rights and to have his or her views respected, considered and given due regard in all matters affecting the child, taking into consideration the child's age, level of understanding and evolving capacities.

20.8.* Public authorities must take all appropriate measures to ensure the right of every child to be protected from direct involvement in any capacity in armed conflicts or civil hostilities including their use as intelligence sources.

Appendix 3: Provisions of European Law Referred to in the Ireland/ Northern Ireland Protocol

Council 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

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

Council 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

Council 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