

WHERE NEXT FOR A

Bill of Rights

FOR NORTHERN IRELAND?



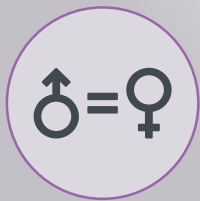
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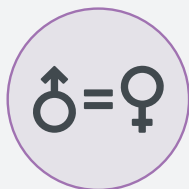
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The purpose of this report is to explain the findings of a research project funded by Joseph Rowntree Charitable Trust (JRCT) about the next steps for a Northern Ireland Bill of Rights. The report notes five key findings and makes 10 recommendations.



EXECUTIVE SUMMARY



A Bill of Rights for Northern Ireland remains part of the unfinished work of the Belfast Agreement/Good Friday Agreement (the B/GFA). Reflecting the B/GFA's mandate, the Northern Ireland Human Rights Commission (NIHRC) launched the Bill of Rights process on 1 March 2000, and submitted its advice on 10 December 2008. The British Government's response to the advice in 2009 was dismissive, and although there have been attempts to revive it, including in the recent political negotiations, the process has stalled. It is now 10 years since this phase of the process was concluded, and 20 years since the conclusion of the B/GFA.

To help progress the Bill of Rights, this project produced a draft model Bill of Rights based on the NIHRC's 2008 advice. The idea was to turn the NIHRC's recommendations into something that looked like draft model legislation. For the purpose of this exercise the NIHRC's advice was followed closely and used as the basis for the legislation.

The publication of a draft legislative model Bill produced several responses. First, the draft model Bill was welcomed by participants as a meaningful contribution. Second, most participants felt that the draft model Bill did not go far enough regarding certain rights/areas. These included:

- women's rights, including reproductive rights;
- stronger provisions on children's rights;
- a stronger equality provision, with particular emphasis on disability and the need to protect younger people;
- refugee rights;
- marriage equality.

A third finding is that Brexit has created a receptive environment for putting the Bill of Rights centre stage, to help ensure there is a legal framework in Northern Ireland that will assist in clarifying and underpinning social, economic and citizenship rights. In light of Brexit, the draft model Bill therefore needs to be updated and augmented to reflect the changing particular circumstances in Northern Ireland. The following rights/issues were highlighted (some of which are impacted by the ongoing Brexit discussions):

- citizenship equality;
- freedom of movement;
- equivalence of rights on the island of Ireland;
- EU citizenship rights;
- voting rights.

Several participants also referred to another important source of rights protection under threat, namely the European Convention on Human Rights (ECHR) and the Human Rights Act 1998 (HRA). The British Government has committed to repeal the HRA and replace it with a British Bill of Rights; it has even referred to possible withdrawal from the ECHR (something that may well become more straightforward after Brexit). While such a threat has been delayed due to Brexit, it appears to be only temporary, and raises the spectre of a further lowering of the threshold of rights protection and further undermining the B/GFA.

In summary, the final key finding is that Brexit combined with the repeal of the HRA and possible withdrawal from the ECHR increase the significance of the Bill of Rights. This report shows how a Bill of Rights could be a solution to the plethora of current rights and equality challenges.

RECOMMENDATIONS

In taking forward this work we make the following recommendations.

1

The Bill of Rights process, including the work of the NIHRC and the Bill of Rights Forum, needs to be acknowledged and celebrated as a significant contribution to nurturing a robust human rights culture in Northern Ireland. The process, and all those who worked tirelessly to advance it, never garnered the public recognition that the effort deserved. In this report, we commend everyone who engaged and participated in this constitutional enterprise. We believe that the judgement of history will vindicate those who promoted an ambitious vision for human rights and equality for this society.

2

We agree with those who suggest that the Bill of Rights is a 'solution' that is worth revisiting in the light of Brexit.

3

We agree with those who argue that there is a rights and equality crisis in Northern Ireland, and those who highlight the fact that this is a society in transition.

4

We note that the failure to give effective domestic legal force to the concept of equal citizenship and the rights/equality components of the peace process has disturbing, ongoing and underreported consequences. It has contributed more than is often acknowledged to the societal and other pressures on the power-sharing institutions. This is what we term a 'formalisation failure' with respect to core concepts; the pursuant unwillingness of statutory and other institutions to intervene has left major principles of the peace process to be fought out in the political arena, with familiar and predictable outcomes. The attempt by the NIHRC to confront this trend, in its advice, has never been adequately recognised.

5

As envisaged in the B/GFA, the advice submitted by the NIHRC, and all associated contributions, should inform the next steps. There is no need or desire to start from a blank page.

6

Close attention should be paid to all aspects of the B/GFA mandate when taking this work forward. The focus on the term 'particular circumstances' of Northern Ireland should not distract from the other aspects of the remit, for example, the need to consider 'international instruments and experience'.

7

The Bill of Rights should be taken forward as Westminster legislation in the way provided for in the NIHRC's advice (HRA plus). This should not prevent preparatory initiatives that seek to build momentum or provide clarification. Any such work must commence from completed documentation and not be a further exercise in prevarication, obstruction and delay. This fact is also no impediment to the Assembly and Executive advancing specific human rights and equality goals within the context of this overriding constitutional framework. In particular, the Assembly and Executive should be proactive and imaginative in their work of 'observing and implementing' existing international human rights obligations.

8

The NIHRC's advice was submitted 10 years ago. Much of it remains persuasive and holds, and the extent to which the NIHRC included a full range of rights is impressive, but also the subject of disagreement. It was, however, a compromise document then and there are areas where further thought is needed, including for example, marriage equality and women's rights. Although we note that there is much public comment about the extent of the advice, we believe this has clouded and obscured the voices of those who still believe the advice never went far enough.

9

The British and Irish Governments have a responsibility, as co-guarantors of the B/GFA, to address this outstanding element of the Agreement. The British Irish Intergovernmental Conference provides a formal setting for such work. We accept that there are competing views about the status of the process, and how it might be taken forward. However, our view is that it is a reasonable expectation, flowing from a generous and purposive reading of the Agreement (and subsequent developments), that a Bill of Rights enacted at Westminster would be the final outcome. In other words, we share the view of those who believe this is an outstanding legacy issue that requires urgent attention.

10

The process, since inception, has been marked by a lack of cross-community party political consensus. That remains a major obstacle to progress, and will present a formidable challenge to, for example, any new ad hoc Assembly Committee that is established. It was apparent throughout that unionist/nationalist divisions did not always neatly map on to the views of individuals and communities. If a new political process can unlock progress and break the current stand-off then it can be tentatively welcomed, but questions will remain about how it will be structured, how participation will be ensured and, perhaps of most significance, how an acceptable outcome will be delivered. We share the view, heard often in our discussions, that we should be ambitious for human rights and equality in Northern Ireland and that the time is right to re-open this conversation.

ACKNOWLEDGEMENTS

We have had a long-standing commitment to, and involvement in, the Bill of Rights process. We would like to acknowledge the extensive support and many discussions down the years on this theme. We have long admired the remarkable levels of engagement in this debate and the often heroic contributions.

Like many academics in Northern Ireland we have been observers and participants in these conversations, and have ourselves written about the process and contributed to it. This brings advantages and disadvantages that should be acknowledged.

One of the forerunners for this project was a 2014 research report 'Political Capacity Building: Advancing a Bill of Rights for Northern Ireland' written by Monica McWilliams, Priyam Yarnell and Anne Smith. That report set out the current position of the Northern Ireland political parties and the position of the British and Irish Governments on advancing a Bill of Rights for Northern Ireland. This, and the current research project, were funded by Joseph Rowntree Charitable Trust (JRCT). We would like to acknowledge the support of JRCT, which has a long history of involvement in human rights issues in Northern Ireland. The sections of this report on Brexit draw upon research undertaken (by Colin Harvey) as part of the ESRC funded BrexitLawNI project, and we would like to acknowledge that contribution here.

Another person who has been deeply involved in human rights and the peace process whom we would like to thank is Monica McWilliams, an Emeritus Professor at the Transitional Justice Institute, Ulster University. Monica played an instrumental role in securing funding for this project. Monica was also a signatory

to the 1998 B/GFA and a delegate to the multi-party peace talks in Northern Ireland from 1996 to 1998. She was elected to the first Northern Ireland Assembly from 1998-2003 where she represented the Northern Ireland Women's Coalition. She served as Chief Commissioner of the NIHRC from 2005 to 2011. It was under her leadership, and with the support of a majority of other commissioners (including one of the authors of this report), that the NIHRC delivered its advice to the British Government on the 10 December 2008.

We would like to acknowledge the co-operation, contribution and participation of all participants throughout the course of this project. We would also like to thank the Human Rights Consortium for their co-operation and co-sponsoring some of the public engagement meetings.

There are two other people we would like to thank, namely Brenda King from the Office of the Legislative Counsel, Northern Ireland Assembly and Eamonn Moran. Brenda provided us with an excellent expert draftsman, Eamonn Moran. Eamonn is a very experienced parliamentary counsel, and is the former head of two drafting offices (Victoria, Australia and Hong Kong). Eamonn is originally from Northern Ireland, where he began his drafting career. Eamonn has drafted Bills for the Northern Ireland Assembly and was involved in drafting the Victorian Charter of Human Rights and Responsibilities Act 2006. Eamonn is a Queen's Counsel and has been the recipient of several awards for his service. In 2005, he was awarded the Public Service Medal, an award conferred by the Australian Government for outstanding public service. In 2012, he was given an SBS Award in the Hong Kong Honours List for distinguished and dedicated service. Without Eamonn's expertise the production of a draft model Bill would not have been possible. The Bill has been welcomed as a meaningful contribution to this debate, and is the first time this task has been undertaken; so it is historic in its own way.

ABOUT THE AUTHORS

About the Authors

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Colin Harvey is Professor of Human Rights Law in the School of Law, Queen's University Belfast, a Fellow of the Senator George J Mitchell Institute for Global Peace, Security and Justice, and an Associate Fellow of the Institute of Irish Studies. He has served as Head of the Law School, a member of Senate, a Director of the Human Rights Centre, and as a Director of Research. Before returning to Queen's in 2005 he was Professor of Constitutional and Human Rights Law at the University of Leeds.

He has held visiting positions at the University of Michigan, Fordham University, and the London School of Economics and Political Science. He has taught on the George Washington University – Oxford University Summer School in International Human Rights Law, and on the international human rights programme at the University of Oxford. He is a member of the Academic Panel at Doughty Street Chambers, a Senior Research Associate, Refugee Law Initiative, School of Advanced Study, University of London, a member of the Gender Identity Panel (Northern Ireland) and member of the Equality and Diversity Forum Research Network. Professor Harvey was a member of the REF2014 Law sub-panel and a member of the REF2014 Equality and Diversity Advisory Panel.

He has served as a Commissioner on the Northern Ireland Human Rights Commission, and as a member of the Northern Ireland Higher Education Council. He is the Editor of the Series Human Rights Law in Perspective (Hart-Bloomsbury) and is on the editorial boards of Human Rights Law Review, Northern Ireland Legal Quarterly and European Human Rights Law Review.

He has written and taught extensively on human rights law and policy and recently led an ESRC funded project on the consequences of Brexit for Northern Ireland (www.brexitlawni.org).

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Anne Smith is a Senior Lecturer at the Transitional Justice Institute and the School of Law at Ulster University. Her research and teaching interests are transitional constitutionalism, comparative constitutional law, human rights and equality. She has published widely in these areas and is currently writing a book on Negotiating Social Justice: The Drafting of Bills of Rights (Hart Publishing, forthcoming).

Anne's research has been supported by grants from Joseph Rowntree Charitable Trust. She is a Senior Fellow of HEA and a Fellow member of CHERP and teaches at both undergraduate and postgraduate level. She received the 'Excellence in Teaching' award (Faculty of Social Sciences category) at Ulster University Students' Union Awards Ceremony in June 2016.

Anne is a member of various organisations such as the British Association for Canadian Studies and is an Executive member for the Committee on the Administration of Justice. She also holds leadership roles in various research networks, such as the Head of the Ireland/United Kingdom of the Academic Network on the European Social Charter (ANESC/RACSE) and is a member of the Coordination Council of ANESC/RACSE and was the coordinator for the Economic and Social Rights Academic Network UK and Ireland (ESRAN-UKI) from March 2017-November 2018.

Anne is also a peer reviewer for several journals such as Interdisciplinary Journal of Human Rights Law; Nordic Journal of International Law; and the Journal of Human Rights.

Section One

Introduction

This policy report sets out our modest contribution on the next steps for a Bill of Rights for Northern Ireland. We decided to adopt a practical approach by producing a draft model Bill of Rights based on the 2008 advice of the Northern Ireland Human Rights Commission (NIHRC).¹ The idea was to turn the recommendations of the NIHRC into something that looks like draft model legislation. Our aim was not to rehearse tired arguments about the pros and cons of a Northern Ireland Bill of Rights. Instead the objective was to move the debate forward by looking at the content of a Bill of Rights. One of the tragedies of the Northern Irish process is precisely this absence of focused discussion on content. Another tragedy is that Northern Ireland has several solutions and mechanisms that could potentially address the political crises that prompted the collapse of the devolved institutions. There remains a general sense of a rights and equality crisis that needs to be addressed. Some of the issues that have featured in this conversation (these are by no means exhaustive) include: marriage equality; adoption restrictions; abortion law; language rights; dealing with the past; victims and survivors; parades; the misuse of Petitions of Concern; flags and identity; and, of course, there is now the added complication of Brexit and the uncertainties around human rights protection that will flow from it. We suggest that a Bill of Rights might provide a coherent and cohesive legislative framework that politicians could ignore at their peril. In short, a Bill of Rights might act as a useful check against abuses of power.

We believe this project is timely, as 2018 marks the 20th anniversary of the Belfast/Good Friday Agreement (the B/GFA) and the 10 December 2018 is 10 years on from the NIHRC's advice. While it is important to acknowledge that the B/GFA heralded an end to decades of violent conflict, we cannot and should not neglect the lack of delivery on some of the human rights and equality provisions in the B/GFA. The B/GFA generated hope that it would lead to a fairer, more inclusive and human rights-based society across the whole island², and it held out the promise of the protection and vindication of the human rights of all.³ Unfortunately, 20 years later that promise has not been realised, as Northern Ireland remains without, for

¹ Northern Ireland Human Rights Commission, *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland* (10 December 2008).

² Michael Farrell 'The Irish Government's Compliance with Its Commitments' in *Mapping the Rollback? Human Rights Provision of the Belfast/Good Friday Agreement 15 years on* (Committee on the Administration of Justice 2013) 25.

³ Rights, Safeguards and Equality of Opportunity, paragraphs 2 and 9.

example, a Bill of Rights and the necessary advances in other areas have not been made. The Bill of Rights has joined a long list of ‘parked issues’ in the ‘too complex and difficult box’. This seems hardly credible given the extensive references to the Bill of Rights in the B/GFA. Aside from the main provision for a Bill of Rights referred to in the B/GFA as the ‘Rights, Safeguards and Equality of Opportunity’ paragraph, the Bill of Rights is mentioned in other parts of the B/GFA.⁴ It would therefore appear to be a reasonable expectation that a Bill of Rights, reflective of the B/GFA’s mandate, would one day appear.

Reflecting the B/GFA’s mandate, the NIHRC eventually delivered its advice on the 10 December 2018. The B/GFA’s terms of reference were that such a Bill was to reflect the ‘particular circumstances of Northern Ireland’ and to consist of rights supplementary to the European Convention on Human Rights (ECHR), among other things. The British Government’s response was dismissive, and the document remains trapped in a political stalemate. This is a matter of serious concern and regret. We argue that we should not accept the non-progression on a Northern Ireland Bill of Rights with constitutional equanimity. Our project is therefore one part of a wider attempt to address this inertia on rights. The urgency of filling in this gap cannot be overstated as the ‘particular circumstances of Northern Ireland’ have changed since the NIHRC submitted its advice in 2008. This is particularly evident in the decision of United Kingdom on the 23 June 2016 to exit from the European Union (EU). As soon as the UK exits from the EU, Northern Ireland risks losing an array of protections. Post Brexit, the situation is complex, but across many areas the UK will no longer be bound by the provisions of the EU Charter of Fundamental Rights⁵, and the decisions of the Court of Justice of the European Union (CJEU),

⁴ Strand One, Democratic Institutions in Northern Ireland, Safeguards, 5: ‘There will be safeguards to ensure that all sections of the community can participate and work together successfully in the operation of these institutions and that all sections of the community are protected, including: [...] (b) the European Convention on Human Rights (ECHR) and any Bill of Rights for Northern Ireland supplementing it, which neither the Assembly nor public bodies can infringe, together with a Human Rights Commission; (c) arrangements to provide that key decisions and legislation are proofed to ensure that they do not infringe the ECHR and any Bill of Rights for Northern Ireland’; *Operation of the Assembly*, 11. ‘The Assembly may appoint a special Committee to examine and report on whether a measure or proposal for legislation is in conformity with equality requirements, including the ECHR/Bill of Rights’; *Legislation*, 26. ‘The Assembly will have authority to pass primary legislation for Northern Ireland in devolved areas, subject to: (a) the ECHR and any Bill of Rights for Northern Ireland supplementing it which, if the courts found to be breached, would render the relevant legislation null and void’.

⁵ The EU Charter of Fundamental Rights was given legal footing by the Lisbon Treaty 2007 (Article 6 EU Treaty) and came into force in 2009. It is therefore legally binding on EU member states. The Great Repeal Bill: White Paper is explicit that the EU will cease to apply as soon as the UK leaves the EU, see chapter 2, paragraph 2.23 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604516/Great_repeal_bill_white_paper_accessible.pdf>

the judicial body that interprets EU law. This means that there will be serious question marks over the extent and the delivery of a wide range of rights (most notably equality rights, employees' rights such as the right to stop unfair dismissal and safe working conditions as well as some socio-economic rights such as access to health care, social and housing assistance, protections relating to personal data and the right to an effective judicial remedy). Citizenship rights and national identity will also be affected by Brexit. The B/GFA, for example, recognises the right of people of Northern Ireland to identify themselves and be accepted as Irish or British (or both), and the right to hold both British and Irish citizenship, a right that 'would not be affected by any future change in the status of Northern Ireland'. Furthermore, when the B/GFA was signed, there was the assumption that both the British and Irish Governments would be Member States of the EU. Indeed, one of the purposes of the B/GFA was declared to be that both governments wished:

To develop still further the unique relationship between their peoples and the close co-operation between their countries as friendly neighbours and as partners in the European Union.⁶

However, Brexit means that one of the 'partners' will be a 'third country', and this will bring a major change in status for Northern Ireland. The question therefore arises as to how this will impact on, for example, the protection of citizenship provisions outlined in the Agreement. In this context, in order to uphold and respect the Agreement, it is imperative that the Bill of Rights takes centre stage once again.

While the EU is a source of rights protection for Northern Ireland, and occupies a central place in the B/GFA (and its background assumptions), another essential source of protection is the ECHR and the Human Rights Act 1998 (HRA). However, these too are under threat, as the British Government has committed to repeal the HRA and replace it with a British Bill of Rights and has referred to a possible withdrawal from the ECHR.⁷ While such a threat has been delayed due to Brexit, it is only temporary and raises the spectre of a further lowering of the threshold of rights protection and further undermining the B/GFA.⁸ A further concern is the

⁶ *Preamble* to the British-Irish Agreement, <<https://www.dfa.ie/media/dfa/alldfawebstimedia/treatyseries/uploads/documents/treaties/docs/200018.pdf>>

⁷ The Conservative Party, *Protecting Human Rights in the UK: Changing Britain's Human Rights Law* (Oct. 2014); See also the Conservative Party Manifesto (2015) 60.

⁸ The British government has stated that the British Bill of Rights will be delayed until after Brexit, see Daniel Bond, *EXCL British Bill of Rights delayed until after Brexit, Liz Truss reveals*, Politics

requirement that Member States of the EU should also be party to the ECHR. This means (depending on the nature of the future relationship) that post Brexit the UK would no longer have to abide by the rules of membership of this particular supranational 'club'. This raises fundamental concerns as under the Agreement the UK Government is obliged to incorporate the ECHR into the law of Northern Ireland. Both Brexit and the repeal of the HRA (and the possible withdrawal from the ECHR) increases the significance of the Bill of Rights. We, and many others, have argued that a Bill of Rights could provide the solution to the plethora of rights and equality challenges emerging from Brexit, and the repeal of the HRA and the possible withdrawal from the ECHR. This project is therefore our attempt to start thinking again about the Bill of Rights for Northern Ireland. It is our contribution to help renew the discussion around what should be in a Bill of Rights.

We hope that it can return the debate not simply to the idea of a Bill of Rights in the abstract, but the detail of what it should contain and the possible ways forward to progress the adoption of the instrument. The remainder of this section sets out our approach.

Our Approach

Having set out the background and context of the research, the next section begins with a brief definition of Bills of Rights. Providing precision and clarity will help to address technical and factual misconceptions. We then proceed to give an overview of the drafting process that resulted in the NIHRC's 2008 advice. This section will also provide a recap on the NIHRC's advice. The section which follows then discusses the changing 'particular circumstances of Northern Ireland' since the B/GFA and brings us up to where we are now. The final chapter sets out recommendations. These recommendations are based on the feedback from the events organised as part of this project, engagement with a wide range of key stakeholders.

Throughout this project we held a series of public engagements and meetings. The purpose of these public events was to engage with people who have been, and continue to be, involved in the Bill of Rights process (such as members of civil and political society, and statutory human rights and equality organisations).

The first event was on the 28 June 2017 in Belfast, when we launched the legislative draft Bill of Rights based on the NIHRC's advice. It was well attended, with several key stakeholders such as: political representatives, the NIHRC, civic society members, academics and students. All welcomed the publication of the draft model Bill as a significant step in contributing to the Bill of Rights debate. The next two events were in Magee, Ulster University on the 29 November 2017 and in Queen's University Belfast on the 14 December 2017. Both these events were attended by some political representatives, civil society human organisations (both non-statutory and statutory) and students, and were co-organised with the Human Rights Consortium.

During these events we asked and listened to feedback on the following questions:

- What is your view of the current state of the Bill of Rights 'process' in Northern Ireland?
- What was and is your view of the advice submitted by the NIHRC in 2008?
- What about the response of the Northern Ireland Office (NIO)?
- Do you think there are substantive gaps? If so, what are they?
- Did the NIHRC go too far? Or not far enough?
- Are the proposals around implementation and enforcement sufficient?
- How does Brexit alter the picture?
- How do you think the Bill of Rights project should advance?
- What role should the NIHRC and civil society play in the next steps?
- How might this project assist?

At each event we highlighted that we did not represent the NIHRC and our role was not to defend the NIHRC's advice.⁹ We also explained that we were cognisant that there were many contributions to the Bill of Rights process, however we decided to start with the advice of the Commission as they were the body tasked (under the terms of the B/GFA and the Northern Ireland Act 1998) to take this work forward. This approach received support from those who attended the events. We are also aware that the NIHRC's advice was not unanimously welcomed, both within and outside the NIHRC. Two Commissioners dissented, and while there was cross-community support there was a lack of political consensus. However, rather than starting off with a blank piece of paper we concluded that the advice is a strong basis on which to proceed.

The project therefore takes the Bill of Rights as it stands in the advice submitted by the NIHRC, and has translated this advice into a legislative draft Bill, which is included as an annex. Based on responses and feedback, the report identifies the areas where people feel that the NIHRC's advice did not go far enough, and now it needs to be augmented and updated to reflect the changing circumstances as a result of Brexit. We hope that this policy report will be regarded as a constructive and helpful contribution to the advancement of an inclusive conversation about a Northern Ireland Bill of Rights.

⁹ One of the authors of this report (Colin Harvey) served as a commissioner (2005-2011) and was a member of the NIHRC when the advice was submitted on 10 December 2008.

Section Two

Defining Bills of Rights, the Northern Ireland Bill of Rights process and the NIHRC's advice

Introduction

To give due respect to the drafting process (for the NIHRC's advice) and indeed to all those who have worked on the Bill of Rights for decades, an overview of that drafting process is essential. Before doing so, it is necessary to provide some clarification.

A Common Framework

A Bill of Rights is essentially a safeguard that provides everyone with protections and assurances by setting out a list of fundamental rights that have to be protected, respected and fulfilled. In deeply divided societies, where there is division along ethno-national lines, such measures are, we argue, essential. A Bill of Rights is part of a human rights framework that acts as a check and balance on the exercise of power, and helps to promote good governance. A Bill of Rights does this by binding governments to provisions that are based on, and informed by, international standards. This idea, of binding a system of governance, should not be regarded as undermining democracy but rather a mechanism to promote democracy: it provides a common framework within which politics can operate. Without having that common framework 'it would be the equivalent of asking two teams to play football without a referee or any rules'.¹⁰

The key findings from the voluminous literature on Bills of Rights are that there is no 'one size fits all' model. Comparative experience shows that Bills of Rights can range from those that are constitutionally entrenched (in other words a Bill of Rights is firmly established so as to prevent a future government removing it) to non-entrenched through to statutory bills where the legal process of removal is less difficult.¹¹ Whatever model a Bill of Rights takes, the key point is that although a Bill

¹⁰ Kevin Hanratty, *The Agreement at 20*, 10 April 2018 <<http://rightsni.org/2018/04/the-agreement-at-20/>>

¹¹ Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Harvard University Press 2004) 220; Ronagh McQuigg, *Bills of Rights: A Comparative Perspective* (Intersentia 2014); Philip Alston (ed), *Promoting Human Rights Through Bills of Rights Comparative Perspectives* (Oxford University Press 1999).

of Rights may not resolve contentious issues in a divided society, where there is division amongst ethno-national lines, it can help provide a blueprint for good and accountable governance. If they do not act in accordance with the common framework they will be held accountable. Simply put, in the context of Northern Ireland, a Bill of Rights can be the 'sheet music for a Stormont Orchestra'. Unfortunately, and despite the considerable effort and time people devoted to this issue as evidenced by the participation in the drafting process (see below), the 'Stormont Orchestra ... has been playing out of tune for a very long time'.¹²

Process

Under the B/GFA the NIHRC was given a mandate for the Bill of Rights process.¹³ This mandate therefore arises from a peace agreement which recognises that human rights and equality violations were at the heart of a protracted conflict and therefore need to play a key role in helping to resolve the conflict.¹⁴ Cognisant of this context, the NIHRC after 'careful consideration'¹⁵ adopted a broad interpretation of their mandate. To help formulate their advice to the British Government on rights that reflect 'the particular circumstances of Northern Ireland' and are supplementary to the ECHR, pursuant to its mandate under the B/GFA, the NIHRC made strenuous efforts to make the process as open and inclusive as possible from the outset. The process was officially launched in March 2000, and spanning over an eight year period, the NIHRC engaged in activities that included: an extensive range of consultations resulting in the publication of a number of consultation papers and discussion pamphlets; carrying out and publishing opinion surveys; education, training and awareness-raising programmes to assist those who wished to contribute to the debate; the training of community facilitators; a schools programme; and an extensive range of relevant workshops, conferences, information events and public and private meetings with individuals, political parties and various groups.¹⁶ The NIHRC received over 650 formal submissions and

¹² See above n 10.

¹³ The B/GFA, 'Rights, Safeguards and Equality of Opportunity', paragraph 4, 16-17.

¹⁴ The B/GFA, Declaration of Support, paragraph 2. There have been other negotiated agreements such as the Joint Declaration by the British and Irish governments, April 2003; the St Andrews Agreement, October 2006; the Hillsborough Agreement, February 2010 and the Stormont House Agreement 2014. For a discussion on these and references to the Bill of Rights, see Anne Smith, Monica McWilliams, and Priyam Yarnell, *Political Capacity Building: Advancing a Bill of Rights for Northern Ireland* (Transitional Justice Institute) 2014, chapter 3.

¹⁵ Northern Ireland Human Rights Commission, *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland* (10 December 2008) 9.

¹⁶ *ibid* 10–13.

informal expressions of interest from individuals and organisations.¹⁷ The NIHRC also met regularly with the Human Rights Consortium, which was established in 2000, independent of the NIHRC, and which was engaged in an intensive awareness-raising campaign on the Bill of Rights.¹⁸ The NIHRC's deliberations included a rigorous consideration of the recommendations of the Bill of Rights Forum; a mechanism that included representation from all the main political parties in Northern Ireland and various sections of civic society.¹⁹ The Bill of Rights Forum was comprised of 28 members with 14 representatives from civil society and 14 representatives from the main political parties²⁰ and was chaired by an independent human rights expert, Chris Sidoti.²¹ The Forum's terms of reference were consistent with the NIHRC's mandate as set out in the B/GFA. When the Bill of Rights Forum submitted its report to the NIHRC in March 2008, the Forum could not reach a consensus.²² Instead, the Forum presented a range of options as part of its findings.²³ Although the process resulted in little consensus, the NIHRC welcomed the Forum's findings. On receipt of the Forum's advice, the NIHRC publicly stated its intention to submit its advice on a Bill of Rights to the Secretary of State for Northern Ireland on 10 December 2008. Having met this deadline, the NIHRC's advice was published on 10 December 2008.²⁴

The NIHRC's Advice

The NIHRC did not set out a draft Bill of Rights, but rather the advice took the form of a comprehensive report with detailed recommendations on what rights should be included, and the rationale for the inclusion of each specific right. The NIHRC

¹⁷ *ibid* 10.

¹⁸ *ibid* 11.

¹⁹ *ibid* 13. The origins of the Bill of Rights Forum flow from the Joint Declaration by the British and Irish Governments, April 2003, Annex 3, paragraph 3 but it was established following the St Andrews Agreement 2006.

²⁰ Civil society representation included two seats for trade unions, two for employers, two for churches, one for the human rights NGO sector and seven for the community and voluntary sector. The political parties comprised three seats for the DUP, Sinn Féin, Ulster Unionist Party and the SDLP and two seats for the Alliance Party. This composition was modelled on the Preparation for Government sub-committee.

²¹ Chris Sidoti, an Australian human rights lawyer, former Director of the International Service for Human Rights and a former Australian Human Rights Commissioner, was appointed in March 2007.

²² Bill of Rights Forum, *Final Report: Recommendations to the Northern Ireland Human Rights Commission on a Bill of Rights for Northern Ireland* (31 March 2008).

²³ The key areas of disagreement were what constituted the 'particular circumstances' of Northern Ireland; cultural and identity rights; and social and economic rights, *ibid* 70, 73, 86, 102.

²⁴ Northern Ireland Human Rights Commission, *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland* (10 December 2008).

adopted guidelines which explained why each recommendation was included and set out, in considerable detail, how it had approached the fulfilment of its remit.²⁵

The advice is HRA plus; the intention being to supplement the Act rather than repeal and replace it. The NIHRC put forward 78 recommendations for new substantive rights in addition to others relating to enforcement and implementation. The recommendations comprised a wide range of rights including economic, social and cultural rights as well as civil and political rights. The recommendations included: the right to life; right to liberty and security; right to a fair trial and no punishment without trial; right to marriage or civil partnership; right to equality and prohibition of discrimination; democratic rights; education rights; freedom of movement; freedom from violence, exploitation and harassment; right to identity and culture; language rights; rights of victims; right to civil and administrative justice; right to health; right to an adequate standard of living; right to accommodation; right to work; environmental rights; social security rights; children's rights. The NIHRC took the position that all these rights are capable of judicial enforcement within the existing court structure.

The NIHRC adopted a number of innovative recommendations, including annual reporting to the Northern Ireland Assembly and the Westminster Parliament on progress, as well as the establishment of a Human Rights Committee in the Assembly, and a five-year independent review. The NIHRC also recommended that the Bill would apply to both the Assembly and the Executive and have vertical as well as horizontal application. In other words, it would apply between private persons and the state and between private persons including businesses and other organisations. Regarding standing (which is the ability to bring a case under a Bill of Rights) the NIHRC opted for the current 'sufficient interest' test used for judicial review rather than the narrower test used under the HRA. The latter was considered to be too restrictive, as it only allows individuals and sometimes business and other legal bodies to bring a case if they have been directly affected.

Responses to the NIHRC's advice

The NIO's response (and that of the main unionist parties) was largely dismissive. They argued that the NIHRC should have adopted a narrower interpretation of its mandate and suggested that the NIHRC went beyond its role by including a wide

²⁵ Northern Ireland Human Rights Commission, *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland* (10 December 2008), Appendix 1.

range of rights.²⁶ On the other hand, the SDLP, Sinn Féin and Alliance Party alongside NGOs, community groups, trade unions and other civil society organisations favoured the NIHRC's interpretation of its mandate, and agreed that the mandate, as outlined in the B/GFA, was intended to be broad.²⁷ They supported a generous approach, and the inclusion of a wide range of rights.²⁸ As the following sections explain, the findings of this research project show that some non-governmental organisations (NGOs) also think that the NIHRC's advice did not go far enough, and could be strengthened and, now with Brexit, needs to be augmented to reflect changing circumstances.²⁹

The NIO also sought to merge the Northern Ireland Bill of Rights into a possible UK Bill of Rights. A UK Commission, established in 2011, was effectively asked to consider such a possibility. As with the NIHRC's advice, the UK Commission failed to reach an agreement on whether or not the UK should have its own Bill of Rights.³⁰ However, the UK Commission was unanimous in its conclusion that the Northern Ireland process was a separate one.³¹ It stated unequivocally that the UK process should not interfere with the development of a Bill of Rights for Northern Ireland that had been on-going for the previous thirteen years.³²

We agree with Fintan O'Toole when he notes that, 'Northern Ireland is not Lincolnshire or Somerset. It is a distinct and unique political entity, recognised as such by an international treaty registered with the United Nations: the Belfast Agreement of 1998'.³³ In line with this peace accord, the Northern Ireland Bill of

²⁶ C. Harvey, 'Where now for the Northern Ireland Bill of Rights Process?' [UK Constitutional Law Association](http://ukconstitutionallaw.org/2011/07/28/colin-harvey-where-now-for-the-northern-ireland-bill-of-rights-process/), 28 July 2011, <<http://ukconstitutionallaw.org/2011/07/28/colin-harvey-where-now-for-the-northern-ireland-bill-of-rights-process/>> Two out of the ten commissioners dissented from the final advice; they were Mr Jonathan Bell and Lady Daphne Trimble.

²⁷ Northern Ireland Human Rights Commission, *Summary of Submissions on a Bill of Rights* (July 2003) 19.

²⁸ For a detailed discussion about the response to both the NIHRC's advice and the NIO, see Anne Smith, Monica McWilliams, and Priyam Yarnell, *Political Capacity Building: Advancing a Bill of Rights for Northern Ireland* (Transitional Justice Institute) 2014, chapter 3.

²⁹ Some of these organisations include but are not limited to: the Family Planning Association, the Children's Law Centre; Anti-Poverty Network, Disability Forum and the Committee on the Administration of Justice.

³⁰ Two out of eight commissioners, Baroness Helena Kennedy QC and Professor Philippe Sands QC, dissented from the majority findings that there should be a UK Bill of Rights.

³¹ Commission on a Bill of Rights, *A UK Bill of Rights? The Choice Before Us* Volume 1 (December 2012) 175, paragraph 12.4.

³² Ibid.

³³ Fintan O'Toole: *Belfast agreement is a threat to the new English nationalism*, The Irish Times 5 July 2016, <<http://www.irishtimes.com/opinion/fintan-o-toole-belfast-agreement-is-a-threat-to-the-new-english-nationalism-1.2710209>>.

Rights is, and should continue to be seen as, a separate process, independent of and unfettered by the UK debate about a British Bill of Rights.³⁴

Where are we now?

Up until recently, the Bill of Rights remained stalled, with the British Government insisting on political consensus.³⁵ However, from around 2016 some of the main political parties began to prioritise the Bill of Rights again as an outstanding commitment with transformative implications (something that civil society groups had long argued for). Steadily the Bill of Rights returned as a reminder of the unfinished work of the peace process. It was notable, for example, that Sinn Féin began to prioritise it as an outstanding commitment.³⁶ Independent Unionist MP Sylvia Hermon has also raised the need to revisit the Bill of Rights in the context of Brexit.³⁷

In February 2018, the leaked draft 'agreement' document, the most recent attempt aimed at restoring devolution,³⁸ suggests the Bill of Rights was under serious consideration. In that document there is reference to an 'ad hoc Committee' to be created before the end of 2018, and a strong emphasis on the B/GFA mandate. The Committee would be assisted by four experts, appointed jointly by the First and deputy First Ministers. The starting point would be to provide advice on the meaning of 'particular circumstances', taking into account work completed thus far and factoring in Brexit. The following sections discuss the changing particular circumstances of Northern Ireland.

³⁴ For further information see Colin Harvey, *Northern Ireland and a Bill of Rights for the United Kingdom* British Academy, August 2016.

³⁵ Stormont House Agreement 2014 paragraph 69: 'Noting that there is not at present consensus on a Bill of Rights, the parties commit to serving the people of Northern Ireland equally, and to act in accordance with the obligations on government to promote equality and respect and to prevent discrimination; to promote a culture of tolerance, mutual respect and mutual understanding at every level of society, including initiatives to facilitate and encourage shared and integrated education and housing, social inclusion, and in particular community development and the advancement of women in public life; and to promote the interests of the whole community towards the goals of reconciliation and economic renewal.' The Fresh Start Agreement 2015 offered no proposals for a way forward'.

³⁶ Declan Kearney *Bill of Rights Could Transform Society* 25 July 2017 <<http://www.sinnfein.ie/contents/45577>>

³⁷ House of Commons Debate on the European Union (Withdrawal Bill) 21 November 2017 <<https://www.theyworkforyou.com/debates/?id=2017-11-21c.941.3>>

³⁸ There has been no Executive since January 2017 when Sinn Féin pulled out of the Executive citing 'lack of respect' from the DUP around various rights issues such as the Irish Language Act. Alan Whysall, *The Good Friday Agreement at 20: what went wrong?* 10 April 2018 <<https://constitution-unit.com/2018/04/10/the-good-friday-agreement-at-20-what-went-wrong/#more-6621>> There has also been a political fallout from the Renewable Heating Initiative, see <<https://www.rhiinquiry.org/>>

Section 3

The Changing ‘Particular Circumstances of Northern Ireland?’

Northern Ireland: Global meets Local?

As noted above, one of the key elements of the NIHRC’s mandate under the B/GFA is the reference to the ‘particular circumstances of Northern Ireland’, and this has featured heavily in the discussions. What is *particular* to Northern Ireland and what should this phrase be taken to mean? Even if it is accepted that the conflict is a major aspect of this, what are the consequences for the Bill of Rights? Does this lead to a narrow understanding of human rights protections or does it embrace a full range of guarantees? The responses to these questions have historically been informed by the relevant understanding of human rights, and the approach taken to the conflict. The question addressed here is the extent to which the ‘particular circumstances’ of Northern Ireland have changed, and how this might impact on the approach. On this, it is worth underlining that although this phrase has a tendency to dominate the conversation, it is one part only of the mandate. Of equal significance is the reference to ‘drawing as appropriate on international instruments and experience’.³⁹ This suggests that a global perspective should also infuse the discussions, and it is plain (in the extensive levels of justification offered for the inclusion of each right) that the NIHRC attempted to do precisely that.⁴⁰ There is therefore a risk that an obsessive focus on the ‘particular circumstances’ might be read as an attempt to narrow the terms of the debate, and this has largely been the experience so far (evident in, for example, the reaction of the NIO to the NIHRC’s proposals). This is therefore both a debate about the remit for the NIHRC’s work (and as a result about what the B/GFA intended) and an argument about what a Bill of Rights should be and do.

These questions surfaced in the leaked draft Agreement between Sinn Féin and the DUP from February 2018.⁴¹ There is disagreement about the status of this draft document, but the text is revealing and worth exploring. The first notable thing is that it represents something of an advance on the previous position. Before this the process had stalled to the extent that the Stormont House Agreement simply noted

³⁹ Rights, Safeguards and Equality of Opportunity paragraph 4.

⁴⁰ See above n 1.

⁴¹ ‘Full ‘Draft Agreement Text’ <<http://eamonnmallie.com/2018/02/full-draft-agreement-text/>>

that consensus was absent, with vague aspirations about the values that would continue to inform developments.⁴²

Under the section on 'Rights and Respect' there is reference to the establishment (before the end of 2018) of an ad hoc Assembly Committee.⁴³ The Committee is to 'consider the creation of a Bill of Rights that is faithful to the stated intention of the 1998 Agreement', and the references to supplementing the ECHR and particular circumstances of Northern Ireland are singled out.⁴⁴ The language of international instruments and experience is missing, and this may or may not be a telling absence (given the nature of the document). This Committee will be assisted by an expert Panel of four persons appointed jointly by the First Minister and deputy First Minister. If there was any doubt about how central this phrase now is it is dispelled here. The *first* job of the Panel is to advise the Committee on 'what constitutes "our particular circumstances"'.⁴⁵ In this it is to 'draw upon, but not be bound by, previous work on a Bill of Rights'.⁴⁶ There is reference to the EU (Withdrawal) Bill [now Act], and the need for recommendations on how this will impact on 'particular circumstances'.⁴⁷ This would, presumably, now be taken to refer to the implications of Brexit for the Bill of Rights. It was anticipated that an interim report would be presented by the Committee.⁴⁸

There are several points to note about this 'draft Agreement'. First, it anticipates a role for an ad hoc Committee of the Northern Ireland Assembly in assessing the current position. This inserts a new step in the Bill of Rights process and one that is not envisaged in the Belfast/Good Friday Agreement. It is clear in the Agreement that the next stage (after the Commission's advice) was to be *Westminster legislation*. Second, it is not apparent from the text what the precise role of the Committee will be. For example, will this Committee simply be providing an update of where things currently are or will it be making concrete recommendations for ways forward? What might happen to any report it eventually provides for the Assembly? Does this introduce into the Bill of Rights debate the prospect of Assembly legislation or will this then be taken forward at Westminster? Third, the role of the advisory Panel requires further clarification. This is to be an 'expert' body of four persons. What happens if members disagree, for example, a two-two split?

⁴² Stormont House Agreement paragraph 69.

⁴³ See above n 3 paragraph 3.2.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

Questions will arise over the process of appointments and what the remit will be. For example, will the Panel have an outreach and engagement role or will it be confined to providing technical and other forms of advice? Fourth, there is an overriding reference to the 'stated intention' of the 1998 B/GFA. One of the challenges for this Committee, and for the Panel, is the absence of consensus on precisely this question. Is there a real risk that this process will simply confirm what is already well known about the process? The Panel advice to the Committee may help but it is the case that the disagreements over this will remain there (in terms of Committee membership). Fifth, the provision allows the Committee and Panel to examine and draw upon all the work done thus far. This is an inclusive approach and there is much to consider. The difficulty is that this might be read as undermining the advice submitted by the Commission, and the fact that this stage of the process has in fact been completed. This must, however, be read alongside the reference to the primacy of the intention of the 1998 Agreement. Finally, the text shows awareness of the possible impact of Brexit. Since its adoption the EU (Withdrawal) Act 2018 has been enacted, and there is now a draft Withdrawal Agreement and Political Declaration to consider, among other things.

Time for Change? Building a Progressive Alliance?

At the time of writing, there is still no power-sharing government in place in Northern Ireland. The democratic institutions have not been functioning since January 2017. The election in March 2017 to the Assembly arguably resulted in a new dynamic.⁴⁹ This has fed into a wider public conversation about changing attitudes in Northern Ireland to human rights and equality matters, such as equal marriage, abortion law reform and language rights (among other things). There is plainly an emergent view that Northern Ireland is falling behind, expressed most effectively in civil society activism. This was evident for example in the amendments that were made at Westminster and now reflected in the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 on the equal rights of people in Northern Ireland.⁵⁰ Further evidence for this can be found in the coming together of the leaders of the

⁴⁹ BBC NEWS NI Election 2017 <<https://www.bbc.co.uk/news/election/ni2017/results>> See also, Dr Raymond Russell, *Election Report: Northern Ireland Assembly Election*, 2 March 2017 NIAR 20-17 <<http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2017-2022/2017/general/2217.pdf>>

⁵⁰ See s 4 in relation to equal marriage and abortion law reform. The judgment of the Supreme Court in *In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland)*; *Reference by the Court of Appeal in Northern Ireland pursuant to Paragraph 33 of Schedule 10 to the Northern Ireland Act 1998* [2018] UKSC 27 is also relevant.

four Remain parties during the Brexit process.⁵¹ In particular, it is notable that these parties adopted a Joint Declaration on Human Rights and Equality.⁵² It includes the following:

8. We urge all political parties and both governments to intensify their efforts to ensure that outstanding rights and equality matters (including the Bill of Rights for Northern Ireland) are advanced as a matter of urgency.

This work raises the question of whether there is a renewed appetite for human rights and equality reform. Could, for example, a progressive alliance be forged to advance a new conversation about finally delivering a Bill of Rights for Northern Ireland?

Brexit and the Particular Circumstances of Northern Ireland

Any discussion of the changing position of Northern Ireland must be informed by Brexit and the draft Withdrawal Agreement and Political Declaration.⁵³ Consideration must therefore be given to where this discussion currently is and how it may impact on the Bill of Rights. It seems clear that (although there is much ongoing political debate) a special arrangement for Northern Ireland is embedded as part of the (draft) Withdrawal Agreement; the much discussed ‘backstop’ is one part that. The Protocol on Ireland/Northern Ireland has evolved since the earlier draft, but much of the substance remains. For the purposes of this report the aim is to draw out some key themes. In particular, it is notable that human rights and equality matters are included in the Protocol.

First, this is a special arrangement that is intended to address the *unique circumstances* of Northern Ireland and the island of Ireland (not merely particular but unique). The aim (as spelled out in the text) is to maintain North-South co-operation, avoid a hard border and protect the Belfast/Good Friday Agreement in all its parts. These have been recurring themes throughout the process. It will be there ‘unless and until’ it is superseded (‘in whole or in part’). As many have argued throughout the Brexit discussions, there is clear merit in recognising the special position of Northern Ireland; it is not credible to suggest that the region is just like any other part of the UK.

⁵¹ BBC NEWS NI *NI Parties Unite in EU Border Appeal* 22 May 2018 <<https://www.bbc.co.uk/news/uk-northern-ireland-44199212>>

⁵² David McCann, *Joint Statement from Sinn Fein, SDLP, Alliance and Green Party on Human Rights post Brexit* 13 June 2018 <<https://sluggerotoole.com/2018/06/13/joint-statement-from-sinn-fein-sdlp-alliance-and-green-party-on-human-rights-post-brexit/>>

⁵³ Both texts are available here: European Council, Council of the European Union, *Special Meeting of the European Council* (Art. 50) 25 November 2018 <<https://www.consilium.europa.eu/en/meetings/european-council/2018/11/25/>>

Second, there is explicit recognition of the constitutional status provisions of the B/GFA and the 'principle of consent'. Article 1 provides:

Objectives and relationship to subsequent agreement

1. This Protocol is without prejudice to the provisions of the 1998 Agreement regarding the constitutional status of Northern Ireland and the principle of consent, which provides that any change in that status can only be made with the consent of a majority of its people.
2. This Protocol respects the essential State functions and territorial integrity of the United Kingdom.
3. This Protocol sets out arrangements necessary to address the unique circumstances on the island of Ireland, maintain the necessary conditions for continued North-South cooperation, avoid a hard border and protect the 1998 Agreement in all its dimensions.

Their inclusion is arguably unnecessary (as nothing being proposed interferes with this principle or these provisions) but they have clearly, in part, been added to placate unionist opposition; and that has not worked. Respect for the territorial integrity of the UK is also underlined for good measure. Again, however, many unionists still do not appear convinced and this is particularly true of the DUP.

Third, rights and equality provisions remain in the Protocol. The UK has agreed to a particular interpretation of the 'no diminution' commitment from the December Joint Report (and it must be recalled that there is a view that this Protocol should and will be superseded, by agreement, in whole or in part as soon as is possible).

ARTICLE 4 Rights of individuals

1. The United Kingdom shall ensure that no diminution of rights, safeguards and 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.
2. The United Kingdom shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human

Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards.

The adopted formulation has prompted much reflection, and there are concerns about its potential limitations. It is, for example, textually linked to a particular section of the B/GFA (Rights, Safeguards and Equality of Opportunity) and it is ‘diminution’ as a result of withdrawal from the EU (although it is worth noting that the European Commission’s Fact Sheet suggests ‘no diminution’ will apply to all such rights and equality concepts of the B/GFA).⁵⁴ The guarantee includes equality and anti-discrimination aspects of union law (listed in an annex: these are six directives – there is no reference to the Charter of Fundamental Rights).⁵⁵ This obligation will be implemented through ‘dedicated mechanisms’. The UK Government has produced an ‘explainer’ that includes a reference to its understanding of the provision:⁵⁶

175. The UK commits, in Article 4, to ensuring no diminution of the rights protected in the Rights, Safeguards and Equality of Opportunity chapter of the Belfast (Good Friday) Agreement. This means that the UK will take steps to ensure that the rights and equalities protections in that chapter, and currently available to individuals in Northern Ireland, are not diminished as a result of UK Exit. The annex to this article contains reference to the six core EU anti-discrimination laws that are particularly relevant to the no diminution commitment - including, for example, provision on sectarian harassment. This reflects our acknowledgment that EU law has formed part of the framework providing for guarantees under the Belfast (Good Friday) Agreement in this respect.

176. We have agreed to implement the no diminution commitment through a ‘dedicated mechanism’. It is intended that this mechanism will draw on the existing human rights and equality bodies established under the Belfast (Good Friday) Agreement - namely the Northern Ireland Human Rights Commission (NIHRC), the Equality Commission for Northern Ireland (ECNI) and, on issues with an island of Ireland dimension, the Joint Committee - to provide independent oversight of the ‘no diminution’ commitment. The UK will confer upon NIHRC and ECNI new powers to monitor, supervise, advise and report on and enforce the commitment, as well as provide adequate resources to ensure that they are able to perform their enhanced roles effectively. The UK Government will continue to engage with both Commissions on issues relating to the dedicated mechanism.

⁵⁴ European Commission, *Protocol on Ireland and Northern Ireland* 14 November 2018 <http://europa.eu/rapid/press-release_MEMO-18-6423_en.htm>

⁵⁵ See above n 53 Annex 1.

⁵⁶ HM Government, *Explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union* 14 November 2018 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756376/14_November_Explainer_for_the_agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union__1_.pdf>

The UK will also be required to facilitate the work of relevant institutions, including the Human Rights and Equality Commissions in Northern Ireland. Consideration will have to be given to what this means, particularly with reference to 'facilitate', as this may have consequences for the funding and support available to such bodies.

There is much to ponder in Article 4 of the Protocol, and it should be read in light of other aspects of the Withdrawal Agreement, but enforcement will be an ongoing question (unlike other parts of the Protocol, there is no reference to the *jurisdiction* of the Court of Justice with respect to this provision). It is not fully apparent what a person will be able to do where 'diminution' is alleged, although it is notable that the Withdrawal Agreement (when and if incorporated in the way envisaged) will give, for example, the UK courts formidable powers with respect to incompatible domestic law and the case law of the Court of Justice of the EU will continue to have a role.⁵⁷

In the context of the concept of a 'level playing field', attention should also be paid to Annex 4 of the Protocol, which includes, among other things, reference to labour and social standards (as well as environmental protection) for the purposes of the single customs territory.⁵⁸ This should bring with it relevant guarantees with respect to socio-economic rights, but again, enforcement and implementation will be a serious question here.

Much will depend on how this is taken forward, as well as the work of the other mechanisms included in the Withdrawal Agreement. For example, and as noted, it is clear that when implemented domestically the Withdrawal Agreement will have significant implications for UK courts, including with respect to disapplication, direct effect and the ongoing role of the jurisprudence of the Court of Justice. If the 'no diminution' guarantee is to be meaningful then credible and effective enforcement machinery will be required to fulfil, for example, the requirement for 'dedicated mechanisms'.

Fourth, there is recognition that the UK and Ireland can continue with the Common Travel Area (CTA), subject to prescribed limits (for example, with respect to Ireland's continuing obligations as an EU Member State).

⁵⁷ See above n 53 Article 4(5): 'In the interpretation and application of this Agreement, the United Kingdom's judicial and administrative authorities shall have due regard to relevant case law of the Court of Justice of the European Union handed down after the end of the transition period.' It is also worth noting, however, Article 14(1) of the Protocol: 'Without prejudice to paragraph 4, the authorities of the United Kingdom shall be responsible for implementing and applying the provisions of Union law made applicable by this Protocol to and in the United Kingdom in respect of Northern Ireland.'

⁵⁸ See above n 53.

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 associated rights and privileges can continue to apply without affecting the obligations of Ireland under Union law, in particular with respect to free movement for Union citizens and their family members, irrespective of their nationality, to, from and within Ireland.

It is widely accepted that the CTA requires formalisation as part of an attempt to solidify the British-Irish special relationship (that is currently being sorely tested) and to provide meaningful guarantees to British and Irish citizens.⁵⁹

Fifth, there will be a Specialised Committee on the implementation of the Protocol (and a joint consultative working group that will report to it).⁶⁰ This Committee will be able to consider, for example, matters relating to the rights of individuals that have been raised by the NIHRC, the Equality Commission for Northern Ireland and the Joint Committee (of the two Commissions).⁶¹ It can make recommendations to the Withdrawal Agreement’s Joint Committee. The ultimate dispute settlement provisions are complex, but (where applicable) include an arbitration panel, and must involve the Court of Justice where, for example, the dispute relates to the interpretation of a provision of Union law.

Finally, the Political Declaration foregrounds respect for human rights as a basis for future co-operation.⁶² Notably, this involves a UK commitment to the ECHR:

7. The future relationship should incorporate the United Kingdom's continued commitment to respect the framework of the European Convention on Human Rights (ECHR), while the Union and its Member States will remain bound by the Charter of Fundamental Rights of the European Union, which reaffirms the rights as they result in particular from the ECHR.

83. ... It should also be underpinned by long-standing commitments to the fundamental rights of individuals, **including continued adherence and giving effect to the ECHR**, and adequate protection of personal data, which are both essential prerequisites for enabling the cooperation envisaged by

⁵⁹ See, for example, BrexitLawNI Policy Report: *Brexit, Border Controls and Free Movement* September 2018 <<https://brexitlawni.org/library/resources/policy-report-border-controls-and-free-movement/>>

⁶⁰ See above n 53 Article 16.

⁶¹ See above n 53 Article 16(c): ‘consider any matter of relevance to Article 4 of this Protocol brought to its attention by the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland ...’

⁶² See above n 53: *Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom*

the Parties, and to the transnational *ne bis in idem* principle and procedural rights. (Emphasis added)

There are strong words too about the B/GFA.

139. Both Parties affirm that the achievements, benefits and commitments of the peace process in Northern Ireland will remain of paramount importance to peace, stability and reconciliation. They agree that the Good Friday or Belfast Agreement reached on 10 April 1998 by the United Kingdom Government, the Irish Government and the other participants in the multi-party negotiations (the “1998 Agreement”) **must be protected in all its parts, and that this extends to the practical application of the 1998 Agreement** on the island of Ireland and to the totality of the relationships set out in the 1998 Agreement. (Emphasis added)

There is much more that could be said about the human rights and equality elements of this. For example, the Withdrawal Agreement contains extensive guarantees on the rights of EU citizens and UK nationals.⁶³ The point here is simply to highlight some aspects of the Protocol that are often neglected in the fraught discussions of the ‘backstop’ and Northern Ireland and those that will be of particular interest if there is further work done on the Bill of Rights. Although the outcome of the negotiations will bring vital guarantees (if everything progresses as planned), it does not negate the need for a Bill of Rights. In fact, this arguably makes discussion of a Bill of Rights even more necessary.

Still Here: The Return of Rights and Equality?

Human rights and equality have found a place in the Protocol on Ireland/Northern Ireland. That was not an inevitable outcome; many worked hard to secure inclusion. As welcome as this is, there will be disappointment and concern that the provisions are limited, that the mechanisms on implementation and enforcement raise several questions and that promises given to Irish citizens (from and in Northern Ireland) in December 2017 appear to have been neglected (at this stage). To understand the special arrangement that has been agreed for Northern Ireland it is therefore vital to grasp also the safeguards for rights and equality. If the mechanisms ever become operational then the discussions on these matters are likely to be intense and ongoing. The Protocol will have significant long-term consequences; not all of which will have been foreseen or intended. It is in the practical implementation of these complex provisions that the meaning will become apparent. For example, it must be at least arguable that domestic incorporation of the ECHR in Northern Ireland is

⁶³ See above n 53 Part II.

assured via these developments (as well as the B/GFA), both in terms of the provisions of Article 4 and the political commitments in the Political Declaration.

The political atmosphere around these discussions is tense and challenging. It remains to be seen whether any of this will be operationalised. What is clear is that any revived Bill of Rights discussion will have to take full account of these developments to ensure detailed consideration is given to their impact on the Commission's advice and existing proposals.

It is also worth noting the implications of the EU (Withdrawal) Act 2018, and its provisions in relation to retained EU law. The decision not to include the EU Charter of Fundamental Rights⁶⁴ has been widely questioned⁶⁵, and the legislation has also been criticised for its impact on the devolution arrangements. But rights and equality will not be absent from this post-Brexit world, and it is also notable that the HRA gains some protection in this Act. It remains to be seen whether the Government will seek to revisit its 2017 election manifesto position with respect to the HRA.⁶⁶

The human rights and equality picture in Northern Ireland will be complex and difficult in the post-Brexit world. There is a real risk that guarantees will be eroded over time. In the light of this, there is no better time to revisit the constitutional conversation about a Bill of Rights for Northern Ireland.

⁶⁴ EU (Withdrawal) Act 2018 s 5(4), but note 5(5): 'Subsection (4) does not affect the retention in domestic law on or after exit day in accordance with this Act of any fundamental rights or principles which exist irrespective of the Charter (and references to the Charter in any case law are, so far as necessary for this purpose, to be read as if they were references to any corresponding retained fundamental rights or principles).'

⁶⁵ See, for example, Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights London, 16 November 2018 <https://www.ohchr.org/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf>: 'If the European Charter of Fundamental Rights becomes no longer applicable in the UK, the level of human rights protections enjoyed by the population will be significantly diminished. The UK should not roll back EU-derived human rights protections on workplace regulation and inequality'.

⁶⁶ *Forward Together Our Plan for a Stronger Britain and a Prosperous Future* The Conservative Manifesto 2017 <<https://www.conservatives.com/manifesto>>

Section 4

Responses and Recommendations

Acknowledging and Celebrating the Bill of Rights Process

During the course of this project we heard further discussion, and received feedback, about what might also be included, beyond the advice submitted by the NIHRC. In thinking about the responses, it is notable that the NIHRC'S 2008 was itself a *compromise document*; it did not include everything that, for example, civil society organisations wanted to see there. This point remains badly neglected in the public discussion, with a tendency to prioritise the voices of those who favour minimalist options. When painted in this light – and given the hegemonic (conservative) narratives that tend to dominate public life in Northern Ireland – the NIHRC's advice can lazily be written off as unrealistic. It joins a long list of contributions to public debate in Northern Ireland that is much commented on but little read.

It is worth paying tribute to all those who contributed to the Bill of Rights process; it should never be forgotten that this was a significant constitutional enterprise that involved impressive levels of public participation. Like many such processes in Northern Ireland, participants rarely get the credit or the praise that they deserve for their public engagement and thoughtful interventions.

Reactions and Responses

As noted, there were suggestions that the NIHRC's advice could go further and areas where developments since should now be reflected. These included:

- The rights and equality impact of Brexit;
- Women's rights and reproductive rights;
- Marriage equality;
- Equality of citizenship (British-Irish);
- Language rights;
- Equality and, in particular, the rights of disabled people;
- More specific recommendations needed on rights of children and young people;
- The rights of refugees (in particular, refugee and unaccompanied children);
- Freedom of movement;

- The ongoing neglect of socio-economic rights.

The theme that tended to dominate in the responses was Brexit. It has fuelled widespread anxiety about the future and the impact on existing guarantees. The loss of the EU Charter of Fundamental Rights was much commented on. It was a firmly expressed view throughout this process that the Bill of Rights could be revisited as a potential solution to the rights and equality challenges presented by Brexit.

In light of the research conducted for this project and the responses we have received we make the following recommendations:

1. The Bill of Rights process, including the work of the NIHRC and the Bill of Rights Forum, needs to be acknowledged and celebrated as a significant contribution to nurturing a robust human rights culture in Northern Ireland. The process, and all those who worked tirelessly to advance it, never garnered the public recognition that the effort deserved. In this report, we commend everyone who engaged and participated in this constitutional enterprise. We believe that the judgement of history will vindicate those who promoted an ambitious vision for human rights and equality for this society.
2. We agree with those who suggest that the Bill of Rights is a 'solution' that is worth revisiting in the light of Brexit.
3. We agree with those who argue that there is a rights and equality crisis in Northern Ireland, and those who highlight the fact that this is a society in transition.
4. We note that the failure to give effective domestic legal force to the concept of equal citizenship *and* the rights/equality components of the peace process has disturbing, ongoing and underreported consequences. It has contributed more than is often acknowledged to the societal and other pressures on the power-sharing institutions. This is what we term a 'formalisation failure' with respect to core concepts; the pursuant unwillingness of statutory and other institutions to intervene has left major principles of the peace process to be fought out in the political arena, with familiar and predictable outcomes. The attempt by the

NIHRC to confront this trend, in its advice, has never been adequately recognised.

5. As envisaged in the B/GFA, the advice submitted by the NIHRC, and all associated contributions, should inform the next steps. There is no need or desire to start from a blank page.
6. Close attention should be paid to all aspects of the B/GFA mandate when taking this work forward. The focus on the term 'particular circumstances' of Northern Ireland should not distract from the other aspects of the remit, for example, the need to consider 'international instruments and experience'.
7. The Bill of Rights should be taken forward as Westminster legislation in the way provided for in the NIHRC's advice (*HRA plus*). This should not prevent preparatory initiatives that seek to build momentum or provide clarification. Any such work must commence from completed documentation and not be a further exercise in prevarication, obstruction and delay. This fact is also no impediment to the Assembly and Executive advancing specific human rights and equality goals within the context of this overriding constitutional framework. In particular, the Assembly and Executive should be proactive and imaginative in their work of 'observing and implementing' existing international human rights obligations.
8. The NIHRC's advice was submitted 10 years ago. Much of it remains persuasive and holds, and the extent to which the NIHRC included a full range of rights is impressive, but also the subject of disagreement. It was, however, a compromise document then and there are areas where further thought is needed, including for example, marriage equality and women's rights. Although we note that there is much public comment about the extent of the advice, we believe this has clouded and obscured the voices of those who still believe the advice never went far enough.
9. The British and Irish Governments have a responsibility, as co-guarantors of the B/GFA, to address this outstanding element of the Agreement. The British Irish Intergovernmental Conference provides a formal setting for such work. We accept that there are competing views about the status of the process, and how it might be taken forward. However, our view is that it is a reasonable expectation, flowing from a generous and purposive reading of the Agreement

(and subsequent developments), that a Bill of Rights enacted at Westminster would be the final outcome. In other words, we share the view of those who believe this is an outstanding legacy issue that requires urgent attention.

10. The process, since inception, has been marked by a lack of cross-community party political consensus. That remains a major obstacle to progress, and will present a formidable challenge to, for example, any new ad hoc Assembly Committee that is established. It was apparent throughout that unionist/nationalist divisions did not always neatly map on to the views of individuals and communities. If a new political process can unlock progress and break the current stand-off then it can be tentatively welcomed, but questions will remain about how it will be structured, how participation will be ensured and, perhaps of most significance, how an acceptable outcome will be delivered. We share the view, heard often in our discussions, that we should be ambitious for human rights and equality in Northern Ireland and that the time is right to re-open this conversation.



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Give further effect to rights and freedoms guaranteed under Schedule 1 to the Human Rights Act 1998, to protect and promote other rights arising out of the particular circumstances of Northern Ireland and founded on the principles of full respect for, and equality of, civil, political, economic, social, and cultural rights and of freedom from discrimination, and for connected purposes.

WHEREAS this Parliament:—

- (a) recognises that a just and equal society is best maintained by a stable and functioning democracy and the common observance of human rights;
- (b) acknowledges the dignity and worth of every person and the equal and inalienable rights of all;
- (c) reiterates an absolute commitment to exclusively peaceful means of resolving differences;
- (d) seeks to address the legacy of the past and the special needs of victims and survivors of the conflict;
- (e) wishes to enshrine the entitlement of all to the full range of human rights and fundamental freedoms, safeguarded by the rule of law;
- (f) strives to ensure that every child will grow up safe and secure;
- (g) values the role of women in public and political life and their involvement in advancing peace and security;
- (h) cherishes our common humanity and advocates freedom from fear and want;
- (i) seeks to protect our common heritage and natural environment for future generations;
- (j) accepts the commitment to mutual respect and the religious and civil rights of everyone;
- (k) welcomes the rich variety of languages, beliefs and traditions which is the cultural wealth of our society;
- (l) upholds the existing rights and protections of individuals and groups especially those that guarantee free and fair participation in economic, social and political life; and

- (m) is dedicated to the achievement of reconciliation and the vindication of the human rights of all.

BE IT THEREFORE ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Introduction

1 The Convention Rights

- (1) In the Northern Ireland Bill of Rights, “the Convention rights” means the rights and fundamental freedoms set out in—
 - (a) Articles 2 to 12 and 14 of the Convention;
 - (b) Articles 1 to 3 of the First Protocol;
 - (c) Articles 1 and 2 (1,4) of the Fourth Protocol; and
 - (d) Articles 1 and 2 of the Sixth Protocol,as read with Articles 16 to 18 of the Convention.
- (2) Those Articles have effect for the purposes of the Northern Ireland Bill of Rights subject to any derogation or reservation (as to which see sections 18 to 20).
- (3) The Articles are set out in Schedule 1.
- (4) The Secretary of State may, by order, make any amendments to the Northern Ireland Bill of Rights that the Secretary of State considers appropriate to reflect the effect, in relation to Northern Ireland, of a protocol.
- (5) In subsection (4) “protocol” means a protocol to the Convention—
 - (a) that the United Kingdom has ratified; or
 - (b) that the United Kingdom has signed with a view to ratification.
- (6) An amendment made by an order under subsection (4) cannot come into force before the protocol concerned is in force in relation to Northern Ireland.

2 The Supplementary Rights

- (1) In the Northern Ireland Bill of Rights, “the Supplementary rights” means the rights set out in Schedule 2.
- (2) The Supplementary rights arise out of the particular circumstances of Northern Ireland and have effect for the purposes of the Northern Ireland Bill of Rights subject to any derogation (as to which see section 18).
- (3) A Supplementary Right may be subject under law only to such reasonable limitations as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—
 - (a) the nature of the right;
 - (b) the importance and legitimacy of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the relationship between the limitation and its purpose; and
 - (e) the availability of any less restrictive means to achieve the purpose that the limitation seeks to achieve.
- (4) To avoid doubt, subsection (3) does not apply to an obligation contained in Schedule

2 that requires legislation to be enacted, or a public authority to take measures, in relation to a Supplementary Right.

- (5) However, the Secretary of State must report annually to the Parliament, and a member of the Northern Ireland Executive must report annually to the Northern Ireland Assembly, on the progress made during the previous year in respect of an obligation referred to in subsection (4).

3 Rights in the Northern Ireland Bill of Rights are in addition to other rights and freedoms

A right or freedom not included in the Northern Ireland Bill of Rights that arises, or is recognised, under any other law (including international law and the common law) must not be taken to be abrogated or limited only because the right or freedom is not included in the Northern Ireland Bill of Rights or is only partly included.

4 Interpretation of Convention or Supplementary rights

- (1) A court or tribunal determining a question that has arisen in connection with a Convention right or a Supplementary right—
- (a) must strive to achieve the purpose of the Northern Ireland Bill of Rights and give practical effect to the fundamental values that underpin it as set out in the preamble;
 - (b) must pay due regard to—
 - (i) any judgment, decision, declaration or advisory opinion of the European Court of Human Rights;
 - (ii) any opinion of the Commission given in a report adopted under Article 31 of the Convention;
 - (iii) any decision of the Commission in connection with Article 26 or 27(2) of the Convention;
 - (iv) any decision of the Committee of Ministers taken under Article 46 of the Convention,
 whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the question that has arisen;
 - (c) must pay due regard to other provisions of international law relevant to the Convention right or the Supplementary right; and
 - (d) may consider judgments of foreign and international courts and tribunals relevant to the Convention right or the Supplementary right.
- (2) Evidence of any judgment, decision, declaration or opinion to which regard is required to be had by subsection (1) in proceedings before any court or tribunal is to be given in the manner (if any) provided by rules.
- (3) In this section “rules” means rules of court or, in the case of proceedings before a tribunal, rules made for the purposes of this section—
- (a) in relation to any proceedings, by the Lord Chancellor or the Secretary of State;
 - (b) in relation to proceedings before a tribunal that deals with transferred matters and for which no rules made under paragraph (a) are in force, by a Northern Ireland department.

Legislation and Common Law

5 Interpretation of legislation

- (1) So far as it is possible to do so, primary legislation and subordinate legislation must, in relation to Northern Ireland, be read and given effect in a way that is compatible with the Convention rights and the Supplementary rights.

- (2) This section—

- (a) applies to primary legislation and subordinate legislation whenever enacted;
- (b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and
- (c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

- (3) This section does not affect the operation of section 6(2)(ca) of the Northern Ireland Act 1998 which makes a provision of an Act passed by the Northern Ireland Assembly not law if it is incompatible with a Convention right or a Supplementary right.

6 Incompatible provisions of an Act of Parliament

- (1) Subsection (2) applies in any proceedings in which a court determines whether a provision of an Act of the Parliament, as that provision applies in relation to Northern Ireland, is compatible with a Convention right or a Supplementary right.
- (2) If the court is satisfied that the provision, as it applies in relation to Northern Ireland, is incompatible with a Convention right or a Supplementary right, it may make a declaration of that incompatibility.
- (3) If a declaration of incompatibility is made under subsection (2) in respect of a provision of an Act of the Parliament, the Secretary of State may lay before Parliament the draft of an Order in Council that amends the provision to remove the incompatibility.
- (4) If the draft Order is approved by resolution of each House of Parliament, the Secretary of State must submit it to Her Majesty in Council and Her Majesty in Council may make the Order.
- (5) A declaration of incompatibility under subsection (2)—
 - (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and
 - (b) is not binding on the parties to the proceedings in which it is made.

7 Incompatible subordinate legislation

- (1) Subsection (2) applies in any proceedings in which a court determines whether a provision of subordinate legislation, made in the exercise of a power conferred by an Act of the Parliament, as that provision applies in relation to Northern Ireland, is compatible with a Convention right or a Supplementary right.
- (2) If the court is satisfied that the provision is incompatible with a Convention right or a Supplementary right, it may declare that the provision does not apply in relation to Northern Ireland.
- (3) Subsection (4) applies in any proceedings in which a court determines whether a provision of subordinate legislation, made in the exercise of a power conferred by primary legislation other than an Act of the Parliament, as that provision applies in relation to Northern Ireland, is compatible with a Convention right or a Supplementary right.
- (4) If the court is satisfied that the provision is incompatible with a Convention right or a

Supplementary right and that (disregarding any possibility of revocation) the primary legislation concerned prevents removal of the incompatibility, it may make a declaration of that incompatibility.

- (5) A declaration of incompatibility under subsection (4)—
 - (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and
 - (b) is not binding on the parties to the proceedings in which it is made.
- (6) This section does not affect the invalidity of a provision of subordinate legislation purportedly made in the exercise of a power conferred by an Act of the Northern Ireland Assembly that is not law by force of section 6(2)(ca) of the Northern Ireland Act 1998.

8 Right of Crown to intervene

- (1) The Crown is entitled to notice in accordance with rules of court if, in any proceedings, a court is considering whether to make a declaration of incompatibility under section 6(2) or 7(4) or a declaration under section 7(2) that a provision does not apply in relation to Northern Ireland.
- (2) Any of the following is entitled, on giving notice in accordance with rules of court, to be joined as a party to any proceedings referred to in subsection (1)—
 - (a) a Minister of the Crown (or a person nominated by the Minister);
 - (b) a Northern Ireland Minister;
 - (c) a Northern Ireland department.
- (3) Notice under subsection (2) may be given at any time during the proceedings.
- (4) Anyone who is a party to criminal proceedings as the result of a notice under subsection (2) may, with leave, appeal to the Supreme Court against any declaration of a kind referred to in subsection (1) made in the proceedings.
- (5) In subsection (4)—
 - “criminal proceedings” includes all proceedings before the Courts-Martial Appeal Court; and
 - “leave” means leave granted by the court making the declaration or by the Supreme Court.

9 Common law

So far as it is possible to do so, courts and tribunals, in applying and developing the common law, must do so in a way that is compatible with the Convention rights and the Supplementary rights.

Public authorities

10 Conduct of public authorities

- (1) Every public authority must take active steps to respect, protect, promote and fulfil the Convention rights and the Supplementary rights.
- (2) It is unlawful for a public authority to act in a way that is incompatible with a Convention right or a Supplementary right or, in making a decision, to fail to give proper consideration to a relevant Convention right or Supplementary right.
- (3) Subsection (2) does not apply to an act or decision if—

- (a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
 - (b) in the case of one or more provisions of or made under primary legislation that cannot be read or given effect in a way that is compatible with a Convention right or a Supplementary right, the authority was acting so as to give effect to, or enforce, those provisions.
- (4) In this section “public authority” includes—
- (a) a court or tribunal; and
 - (b) any person or body that has functions of a public nature in relation to Northern Ireland,
- but does not include either House of Parliament or the Northern Ireland Assembly or a person exercising functions in connection with proceedings in Parliament or the Northern Ireland Assembly.
- (5) In determining if a function is of a public nature, the factors that may be taken into account include—
- (a) the extent to which a branch of government (whether executive, legislative or judicial and whether local, regional or national) has assumed responsibility for the function;
 - (b) the role and responsibility of a branch of government referred to in paragraph (a) in relation to the subject-matter to which the function relates;
 - (c) the nature and extent of the public interest in the function;
 - (d) the nature and extent of any statutory power or duty in relation to the function;
 - (e) the extent to which a branch of government referred to in paragraph (a) regulates, supervises or inspects the performance of the function;
 - (f) the extent to which a branch of government referred to in paragraph (a) funds the performance of the function;
 - (g) whether the performance of the function involves, or may involve, the use of statutory coercive powers;
 - (h) the extent of the risk that improper performance of the function might be in contravention of a Convention right or a Supplementary right.
- (6) In relation to a particular act or decision, a person or body is not a public authority by virtue only of subsection (4)(b) if the nature of the act or decision is private.
- (7) To avoid doubt, the fact that a function is performed by a person or body under contract does not prevent the person or body being treated as a public authority in relation to the performance of the function.
- (8) A person or body that is a public authority by virtue of its performance of a function must only be treated as a public authority in respect of acts done, or decisions made, in relation to that function.
- (9) In this section “an act” includes a failure to act but does not include a failure to—
- (a) introduce in, or lay before, Parliament or the Northern Ireland Assembly a proposal for legislation; or
 - (b) make any primary legislation or remedial order.

11 Proceedings

- (1) A person who or body that, with sufficient interest in the matter, claims that a public authority has acted (or proposes to act) in a way that is made unlawful by section 10(2) may—
 - (a) bring proceedings against the authority under the Northern Ireland Bill of Rights in the appropriate court or tribunal; or
 - (b) rely on the Convention or Supplementary right or rights concerned in any legal proceedings.
- (2) In determining whether a person or body has sufficient interest in the matter, the court or tribunal must have regard to the need to ensure access to justice.
- (3) Subject to any rule imposing a stricter time limit in relation to the procedure in question, proceedings under subsection (1)(a) must be brought before the end of—
 - (a) the period of one year beginning with the date on which the act or decision complained of took place or was made; or
 - (b) any longer period that the court or tribunal considers equitable having regard to all the circumstances.
- (4) In subsection (1)(a)—
 - (a) “appropriate court or tribunal” means any court or tribunal that may be determined in accordance with rules; and
 - (b) proceedings against an authority include a counterclaim or similar proceeding.
- (5) In subsection (1)(b) “legal proceedings” includes—
 - (a) proceedings brought by, or at the instigation of, a public authority; and
 - (b) an appeal against the decision of a court or tribunal.
- (6) Nothing in the Northern Ireland Bill of Rights creates a criminal offence.
- (7) In this section “rules” means—
 - (a) in relation to proceedings before a court or a tribunal, rules made by the Lord Chancellor or the Secretary of State for the purposes of this section or rules of court;
 - (b) in relation to proceedings before a tribunal in Northern Ireland that deals with transferred matters and for which no rules made under paragraph (a) are in force, rules made by a Northern Ireland department for those purposes, and includes provision made by order under section 1 of the Courts and Legal Services Act 1990.
- (8) In making rules, regard must be had to section 13.
- (9) The Minister who has power to make rules in relation to a particular tribunal may, to the extent the Minister considers it necessary to ensure that the tribunal can provide an appropriate remedy in relation to an act or decision (or proposed act or decision) of a public authority that is (or would be) unlawful as a result of section 10(2), by order add to—
 - (a) the relief or remedies that the tribunal may grant; or
 - (b) the grounds on which it may grant any of them.
- (10) An order made under subsection (9) may contain any incidental, supplemental, consequential or transitional provision that the Minister making it considers appropriate.
- (11) In subsection (10), “Minister” includes the Northern Ireland department concerned.

12 Judicial remedies

- (1) In relation to any act or decision (or proposed act or decision) of a public authority that the court finds is (or would be) unlawful, it may grant any relief or remedy, or make any order, within its powers that it considers just and appropriate.
- (2) But damages may be awarded only by a court that has power to award damages, or to order the payment of compensation, in civil proceedings.
- (3) An award of damages must not be made unless, taking account of all the circumstances of the case, including—
 - (a) any other relief or remedy granted, or order made, in relation to the act or decision in question (by that or any other court); and
 - (b) the consequences of any decision (of that or any other court) in respect of that act or decision,the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.
- (4) In determining—
 - (a) whether to award damages, or
 - (b) the amount of an award,the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.
- (5) A public authority against which damages are awarded is to be treated for the purposes of the Civil Liability (Contribution) Act 1978 as liable in respect of damage suffered by the person to whom the award is made.
- (6) In this section—

“court” includes a tribunal;
“damages” means damages for an unlawful act or decision of a public authority; and
“unlawful” means unlawful under section 10(2).

13 Judicial acts

- (1) Proceedings under section 11(1)(a) in respect of a judicial act may be brought only—
 - (a) by exercising a right of appeal;
 - (b) on an application for judicial review; or
 - (c) in any other forum that may be prescribed by rules.
- (2) This section does not affect any rule of law that prevents a court from being the subject of judicial review.
- (3) In proceedings under the Northern Ireland Bill of Rights in respect of a judicial act done in good faith, damages may not be awarded otherwise than to compensate a person to the extent required by Article 5(5) of the Convention.
- (4) An award of damages permitted by subsection (3) is to be made against the Crown, but an award must not be made unless the appropriate person, if not a party to the proceedings, is joined.
- (5) In this section—

“appropriate person” means the Minister responsible for the court concerned, or a person or government department nominated by that Minister;
“court” includes a tribunal;

“judge” includes a member of a tribunal, a justice of the peace and a clerk or other officer entitled to exercise the jurisdiction of a court;

“judicial act” means a judicial act of a court and includes an act done on the instructions, or on behalf, of a judge; and

“rules” has the same meaning as in section 11(7).

Remedial action

14 Power to take remedial action

(1) This section applies if—

- (a) a provision of legislation is declared under section 6(2) or 7(4) to be incompatible with a Convention right or a Supplementary right and, if an appeal lies—
 - (i) all persons who may appeal have stated in writing that they do not intend to do so;
 - (ii) the time for bringing an appeal has expired and no appeal has been brought within that time; or
 - (iii) an appeal brought within that time has been determined or abandoned; or
- (b) it appears to a Minister of the Crown or Her Majesty in Council or a Northern Ireland Minister that, having regard to a finding of the European Court of Human Rights made after the coming into force of this section in proceedings against the United Kingdom, a provision of legislation is incompatible with an obligation of the United Kingdom arising from the Convention.

(2) A Minister of the Crown or a Northern Ireland Minister, who considers that there are compelling reasons for proceeding under this section, may by order make any amendments to the legislation that the Minister considers necessary to remove the incompatibility.

(3) If, in the case of subordinate legislation, a Minister of the Crown or a Northern Ireland Minister considers—

- (a) that it is necessary to amend the primary legislation under which the subordinate legislation in question was made, in order to enable the incompatibility to be removed; and
 - (b) that there are compelling reasons for proceeding under this section,
- the Minister may, by order, make any amendments to the primary legislation that the Minister considers necessary.

(4) This section also applies where the provision in question is in subordinate legislation and has been quashed, or declared invalid, by reason of incompatibility with a Convention right or a Supplementary right and the Minister proposes to proceed under paragraph 2(b) of Schedule 3.

(5) If the legislation is an Order in Council, the power conferred by subsection (2) or (3) is exercisable by Her Majesty in Council.

(6) Schedule 3 makes further provision about remedial orders.

Other rights and proceedings

15 Safeguard for existing human rights

A person’s reliance on a Convention right or a Supplementary right does not restrict—

- (a) any other right or freedom conferred on the person by or under any law having effect in Northern Ireland; or

- (b) the person's right to make any claim or bring any proceedings that the person could make or bring apart from sections 11 to 13.

Particular rights

16 Freedom of expression

- (1) This section applies if a court is considering whether to grant any relief that, if granted, might affect the exercise of the Convention right to freedom of expression.
- (2) If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied—
 - (a) that the applicant has taken all practicable steps to notify the respondent; or
 - (b) that there are compelling reasons why the respondent should not be notified.
- (3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.
- (4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material that the respondent claims, or that appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—
 - (a) the extent to which—
 - (i) the material has, or is about to, become available to the public; or
 - (ii) it is, or would be, in the public interest for the material to be published;
 - (b) any relevant privacy code.
- (5) In this section—
 - "court" includes a tribunal; and
 - "relief" includes any remedy or order (other than in criminal proceedings).

17 Freedom of thought, conscience and religion

- (1) If a court's determination of any question arising under the Northern Ireland Bill of Rights might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.
- (2) In this section "court" includes a tribunal.

Derogations and reservations

18 Derogations

- (1) This section sets out how, and the circumstances in which, there may be a derogation from a Convention right or a Supplementary right in relation to Northern Ireland.
- (2) A derogation from a Convention right or a Supplementary right only has effect if it is made by an Act of Parliament enacted after each House of Parliament has passed a resolution declaring that a public emergency threatening the life of the nation is in existence and affecting Northern Ireland.
- (3) A declaration under subsection (2) remains in force for the period (not exceeding 3 months) specified in it from the date on which it is made.

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- (4) A derogation made by an Act of Parliament—
- (a) must be no more extensive than is strictly required by the public emergency;
 - (b) must be consistent with the United Kingdom's obligations under international treaties and customary international law;
 - (c) must not extend to any right that is non-derogable under international law including, but not limited to, the rights specified in subsection (9); and
 - (d) only has effect while a declaration under subsection (2) is in force.
- (5) The Secretary of State must ensure that public notice of a derogation is given as soon as reasonably possible after it is made.
- (6) A derogation is of no effect if there is in force legislation that indemnifies a public authority or any person in respect of an unlawful act done in purported reliance on the derogation.
- (7) A person or body with sufficient interest in the matter may apply to Her Majesty's High Court of Justice in Northern Ireland to question the validity of—
- (a) a declaration under subsection (2); or
 - (b) a derogation made by an Act of Parliament or any action taken in relation to, or in reliance on, such a derogation.
- (8) On an application under subsection (7) the High Court may by order—
- (a) suspend the operation of the declaration, derogation or action until the final determination of the proceedings; and
 - (b) on the final determination of the proceedings quash the declaration, derogation or action if satisfied that it is appropriate to do so.
- (9) The following rights are specified for the purposes of subsection (4)(c)—
- (a) the right to life in Article 2 of the Convention;
 - (b) the prohibition on torture and inhuman or degrading treatment or punishment in Article 3 of the Convention;
 - (c) the right not to be held in slavery or servitude in Article 4 of the Convention;
 - (d) the right to challenge the legality of detention in Article 5(4) of the Convention insofar as it corresponds with Article 9(3) of the International Covenant on Civil and Political Rights;
 - (e) the right of everyone charged with a criminal offence to a fair trial contained in Article 6 of the Convention insofar as it corresponds with Article 14(2) and (3) of the International Covenant on Civil and Political Rights;
 - (f) the right to be free of punishment without law in Article 7 of the Convention;
 - (g) the right to freedom of thought, conscience and religion in Article 9 of the Convention insofar as it corresponds with Article 18 of the International Covenant on Civil and Political Rights;
 - (h) the supplementary rights set out in items 21 to 27 of Schedule 2 (prohibition of discrimination) insofar as they correspond with Articles 1 and 2 of the Convention on the Elimination of All Forms of Racial Discrimination, Articles 1 and 2 of the Convention on the Elimination of All Forms of Discrimination against Women, and Article 4 of the International Covenant on Civil and Political Rights;

- (i) the supplementary rights set out in items 37 and 39 of Schedule 2 (right to be free from violence and harassment) insofar as it corresponds with Article 4(a) of the Convention on the Elimination of All Forms of Racial Discrimination;
- (j) the supplementary rights set out in items 38 and 39 of Schedule 2 (right to be protected from sexual exploitation and sexual and other forms of trafficking) insofar as they correspond with Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women;
- (k) the supplementary right set out in item 55 of Schedule 2 (right to health) insofar as it corresponds with Article 12 of the International Covenant on Economic, Social and Cultural Rights;
- (l) the supplementary right set out in item 58 of Schedule 2 (right of women and girls to gender-sensitive and appropriate healthcare services and information) insofar as it corresponds with Article 12(2) of the Convention on the Elimination of All Forms of Discrimination against Women;
- (m) the supplementary right set out in item 59 of Schedule 2 (right to an adequate standard of living) insofar as it corresponds with Article 11(1) of the International Covenant on Economic, Social and Cultural Rights;
- (n) the supplementary rights set out in items 64 of Schedule 2 (right to work) and item 65 of that Schedule (right to just and favourable conditions of work) insofar as they correspond with Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights;
- (o) the supplementary right set out in item 70 of Schedule 2 (social security rights) insofar as it corresponds with Article 9 of the International Covenant on Economic, Social and Cultural Rights;
- (p) the supplementary rights set out in items 71 to 77 of Schedule 2 (children's rights) insofar as they correspond with rights in the Convention on the Rights of the Child.

19 Reservations

- (1) In the Northern Ireland Bill of Rights “designated reservation” means—
 - (a) the United Kingdom’s reservation to Article 2 of the First Protocol to the Convention; and
 - (b) any other reservation by the United Kingdom to an Article of the Convention, or of any protocol to the Convention, that is designated for the purposes of the Northern Ireland Bill of Rights in an order made by the Secretary of State.
- (2) The text of the reservation referred to in subsection (1)(a) is set out in Part II of Schedule 3 to the Human Rights Act 1998.
- (3) If a designated reservation is withdrawn wholly or in part it ceases to be a designated reservation.
- (4) But subsection (3) does not prevent the Secretary of State from exercising the power under subsection (1)(b) to make a fresh designation order in respect of the Article concerned.
- (5) The Secretary of State must, by order, make any amendments to the Northern Ireland Bill of Rights that the Secretary of State considers appropriate to reflect—
 - (a) any designation order; or
 - (b) the effect of subsection (3).

20 Periodic review of designated reservations

- (1) The appropriate Minister must review the designated reservation referred to in section 19(1)(a)—
 - (a) before the end of the period of five years beginning with the date on which section 1(2) came into force; and
 - (b) if that designation is still in force, before the end of the period of five years beginning with the date on which the last report relating to it was laid under subsection (3).
- (2) The appropriate Minister must review each of the other designated reservations (if any)—
 - (a) before the end of the period of five years beginning with the date on which the order designating the reservation first came into force; and
 - (b) if the designation is still in force, before the end of the period of five years beginning with the date on which the last report relating to it was laid under subsection (3).
- (3) The Minister conducting a review under this section must prepare a report on the result of the review and lay a copy of it before each House of Parliament.

Parliamentary procedure

21 Statements of compatibility

- (1) A member of Parliament who introduces a Bill into a House of Parliament that extends to Northern Ireland must make a statement of compatibility in respect of that Bill.
- (2) A member of the Northern Ireland Assembly who introduces a Bill into the Assembly must make a statement of compatibility in respect of that Bill.
- (3) A statement of compatibility must state—
 - (a) whether, in the member's opinion, the provisions of the Bill are compatible with the Convention rights and the Supplementary rights and, if so, how it is compatible; and
 - (b) if, in the member's opinion, any part of the Bill is incompatible with those rights, the nature and extent of the incompatibility and must further state that, despite the incompatibility, the member wishes the House or the Northern Ireland Assembly, as the case requires, to proceed with the Bill.
- (4) The statement must be in writing and be published in such manner as the member making it considers appropriate.

22 Amendment of the Northern Ireland Bill of Rights

- (1) A Minister of the Crown must not introduce in, or lay before, either House of Parliament a proposal for legislation to amend the Northern Ireland Bill of Rights unless the Northern Ireland Assembly has passed, with cross-community support, a resolution praying that a proposal in, or substantially in, those terms should be introduced in, or laid before, Parliament.
- (2) In this section “cross-community support”, in relation to a resolution, has the same meaning as it has in the Northern Ireland Act 1998 in relation to a vote on any matter.

23 Committee on Human Rights

- (1) Standing orders of the Northern Ireland Assembly must make provision for establishing a committee of members of the Assembly to be known as the Committee on Human Rights.
- (2) The role to be conferred on the Committee is—
 - (a) to consider matters relating to human rights in Northern Ireland;
 - (b) to scrutinise Bills introduced into the Northern Ireland Assembly for their compliance with the Northern Ireland Bill of Rights;
 - (c) to conduct consultations and publish reports on matters relating to human rights in Northern Ireland; and
 - (d) to provide guidance to Northern Ireland departments on the preparation of statements of compatibility.

Northern Ireland Act 1998

24 Amendment of Northern Ireland Act 1998

- (1) The Northern Ireland Act 1998 is amended as follows.
- (2) After section 6(2)(c) (legislative competence) insert—

“(ca) it is incompatible with any of the Conventions Rights or Supplementary Rights set out in the Northern Ireland Bill of Rights Act 2017;”.
- (3) After section 69(4) (the Commission’s functions) insert—

“(5) The Commission must monitor and audit the compliance by public authorities with the Northern Ireland Bill of Rights Act 2017.”.

Supplemental

25 Review of the Northern Ireland Bill of Rights

- (1) The Secretary of State must cause a review to be made of the operation of the Northern Ireland Bill of Rights by one or more independent persons, at least every 5 years, and must cause a report of the review to be laid before each House of Parliament as soon as practicable after it is submitted to the Secretary of State.
- (2) The Secretary of State must ensure that a copy of each report is laid before the Northern Ireland Assembly at the same time as, or as soon as practicable after, it is laid before a House of Parliament under subsection (1).

26 Orders etc. under the Northern Ireland Bill of Rights

- (1) Any power of a Minister of the Crown to make an order under the Northern Ireland Bill of Rights is exercisable by statutory instrument.
- (2) The power of the Lord Chancellor or the Secretary of State to make rules (other than rules of court) under section 4(3) or 11(7) is exercisable by statutory instrument.
- (3) Any statutory instrument made under section 19 must be laid before Parliament.
- (4) No order may be made by the Lord Chancellor or the Secretary of State under section 1(4) or 11(7) unless a draft of the order has been laid before, and approved by, each House of Parliament.
- (5) Any statutory instrument to which subsection (2) applies, is subject to annulment in pursuance of a resolution of either House of Parliament.

- (6) The power of a Northern Ireland department to make—

- (a) rules under section 4(3)(b) or 11(7)(b); or
- (b) an order under section 11(9),

is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

- (7) Any rules made under section 4(3)(b) or 11(7)(b) are subject to negative resolution, and section 41(6) of the Interpretation Act (Northern Ireland) 1954 (meaning of “subject to negative resolution”) applies as if the power to make the rules were conferred by an Act of the Northern Ireland Assembly.
- (8) No order may be made by a Northern Ireland department under section 11(9) unless a draft of the order has been laid before, and approved by, the Northern Ireland Assembly.

27 Interpretation, etc

(1) In this Act—

“amend” includes repeal and apply (with or without modifications);

“child” means a person below the age of 18 years;

“the appropriate Minister” means the Minister of the Crown having charge of the appropriate authorised government department (within the meaning of the Crown Proceedings Act 1947);

“the Commission” means the European Commission of Human Rights;

“the Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom;

“declaration of incompatibility” means a declaration under section 6(2) or 7(4);

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“Northern Ireland Minister” includes the First Minister and the deputy First Minister in Northern Ireland;

“primary legislation” means any—

- (a) public general Act;
- (b) local and personal Act;
- (c) private Act;
- (d) Act of the Parliament of Northern Ireland;
- (e) Measure of the Assembly established under section 1 of the Northern Ireland Assembly Act 1973;
- (f) Act of the Northern Ireland Assembly;
- (g) Order in Council—
 - (i) made in exercise of Her Majesty’s Royal Prerogative;
 - (ii) made under section 38(1)(a) of the Northern Ireland Constitution Act 1973 or the corresponding provision of the Northern Ireland Act 1998; or
 - (iii) amending an instrument of a kind mentioned in paragraphs (a) to (f),

and includes an order or other instrument made under primary legislation to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation;

“the Belfast Agreement” means the agreement reached at multi-party talks on Northern Ireland set out in Command Paper 3883;

“the First Protocol” means the protocol to the Convention agreed at Paris

on 20th March 1952;

“the Fourth Protocol” means the protocol to the Convention agreed at Strasbourg on 16th September 1963;

“the Sixth Protocol” means the protocol to the Convention agreed at Strasbourg on 28th April 1983;

“the Eleventh Protocol” means the protocol to the Convention (restructuring the control machinery established by the Convention) agreed at Strasbourg on 11th May 1994;

“remedial order” means an order under section 14;

“subordinate legislation” means any—

- (a) Order in Council other than one referred to in paragraph (g) of the definition of primary legislation;
- (b) order or other instrument made under primary legislation (except to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation);
- (c) order or other instrument made under an Order in Council applying only to Northern Ireland;
- (d) order or other instrument made by a Northern Ireland Minister or a Northern Ireland department in exercise of prerogative or other executive functions of Her Majesty that are exercisable by the Northern Ireland Minister or Northern Ireland department on behalf of Her Majesty;

“transferred matters” has the same meaning as in the Northern Ireland Act 1998; and

“tribunal” means any tribunal in which legal proceedings may be brought.

- (2) The references in subparagraphs (ii) and (iii) of section 4(1)(b) to Articles are to Articles of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol.
- (3) The reference in subparagraph (iv) of section 4(1)(b) to Article 46 includes a reference to Articles 32 and 54 of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol.
- (4) The references in section 4(1)(b) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the Eleventh Protocol (transitional provisions).

28 Short title, commencement, application and extent

- (1) This Act may be cited as the Northern Ireland Bill of Rights Act 2017 and is in this Act referred to as the Northern Ireland Bill of Rights.
- (2) This Act comes into force on the day on which it is passed.
- (3) Paragraph (b) of subsection (1) of section 11 applies to proceedings brought by or at the instigation of a public authority whenever the act in question took place, but otherwise that subsection does not apply to an act taking place before the coming into force of that section.
- (4) This Act binds the Crown.
- (5) This Act extends only to Northern Ireland.

SCHEDULES

SCHEDULE 1

Section 1(3).

THE ARTICLES

PART I

THE CONVENTION

RIGHTS AND FREEDOMS

ARTICLE 2

RIGHT TO LIFE

- 1 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- 2 Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3

FREEDOM FROM TORTURE, INHUMAN OR DEGRADING TREATMENT

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4

PROHIBITION OF SLAVERY AND FORCED LABOUR

- 1 No one shall be held in slavery or servitude.
- 2 No one shall be required to perform forced or compulsory labour.
- 3 For the purpose of this Article the term "forced or compulsory labour" shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.

ARTICLE 5

RIGHT TO LIBERTY AND SECURITY

- 1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
- (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- 2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
- 3 Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
- 4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
- 5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

ARTICLE 6

RIGHT TO A FAIR TRIAL

- 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

- 3 Everyone charged with a criminal offence has the following minimum rights:
- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7

NO PUNISHMENT WITHOUT LAW

- 1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
- 2 This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

ARTICLE 8

RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

- 1 Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- 2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10***FREEDOM OF EXPRESSION***

- 1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- 2 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.

ARTICLE 11***FREEDOM OF ASSEMBLY AND ASSOCIATION***

- 1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
- 2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

ARTICLE 12***RIGHT TO MARRY***

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

ARTICLE 14***PROHIBITION OF DISCRIMINATION***

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ARTICLE 16***RESTRICTIONS ON POLITICAL ACTIVITY OF ALIENS***

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

ARTICLE 17

PROHIBITION OF ABUSE OF RIGHTS

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

ARTICLE 18

LIMITATION ON USE OF RESTRICTIONS ON RIGHTS

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

PART II

THE FIRST PROTOCOL

ARTICLE 1

PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

ARTICLE 2

RIGHT TO EDUCATION

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

ARTICLE 3

RIGHT TO FREE ELECTIONS

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

PART III

THE FOURTH PROTOCOL

ARTICLE 1

PROHIBITION OF IMPRISONMENT FOR DEBT

No one shall be deprived of his liberty merely on the ground of the inability to fulfil a contractual obligation.

ARTICLE 2 (1,4)**FREEDOM OF MOVEMENT**

- 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.
- 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.

PART IV**THE SIXTH PROTOCOL****ARTICLE 1****ABOLITION OF THE DEATH PENALTY**

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

ARTICLE 2**DEATH PENALTY IN TIME OF WAR**

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war, such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

SCHEDULE 2

Section 2(1).

THE SUPPLEMENTARY RIGHTS

RIGHT TO LIFE

- 1 Legislation must be enacted to ensure that all violations of the right to life arising out of the conflict in Northern Ireland are effectively investigated.
- 2 Any mechanism established to investigate such violations must comply fully with international human rights law.

RIGHT TO LIBERTY AND SECURITY

- 3 Everyone who is arrested or detained has the right to consult with a legal representative promptly and privately.
- 4 Everyone who is arrested or detained has the right to have prompt access to a medical practitioner where appropriate.
- 5 Everyone who is arrested or detained has the right to be visited by a family member under appropriate supervision.
- 6 Everyone who is arrested or detained has the right to have a legal representative present during any questioning and to have a sound and video recording made of that questioning.
- 7 Every child or vulnerable adult who is arrested or detained has the right to have a legal representative and an appropriate adult present during any questioning to represent their best interests.
- 8 Every child alleged to, accused of, or proven to have infringed the criminal law has the right to be treated in a manner:
- (a) that pays due regard to the child's age, understanding and needs; and
 - (b) is directed towards the child's reintegration into society.
- 9 Every child has the right not to be detained except as a measure of last resort and, if detained, to be detained only for the shortest appropriate period of time and, while detained, to be:
- (a) kept separately from detained persons over the age of 18 years; and
 - (b) treated in a manner, and kept in conditions, that pays due regard to the child's age.
- 10 A child in the criminal justice system has the right not be subjected to the use of force or methods of restraint unless that is absolutely necessary to avoid serious injury to the child or another person.
- 11 Public authorities must take all appropriate measures to reintegrate into society anyone released from detention or compulsory residential care of any kind by providing support towards independent living both before and after their release.

NO PUNISHMENT WITHOUT LAW

- 12 Everyone has the right to trial by jury for serious offences and the right to waive it.
- 13 Evidence obtained through torture or inhuman or degrading treatment must be excluded. Evidence obtained through a breach of any other right set out in the Northern Ireland Bill of Rights must also 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.
- 14 The procedures in relation to a child or a vulnerable adult accused of a criminal offence must pay due regard to:
- (a) the age of the child and the understanding of the child or vulnerable adult; and
 - (b) the desirability of promoting their reintegration into society.

15 Every person who is a witness in a criminal trial has the right, before and after giving evidence, to such protection and support as is appropriate to their needs as a witness.

16 Every person who is a juror in a criminal trial has the right to such protection and support as is necessary to allow them to carry out their role properly.

17 Every person who is a member of the judiciary or of the legal profession has the right to such protection as is necessary to allow them to perform their duties properly.

RIGHT TO MARRY

18 Everyone who is married has the right to end the marriage in accordance with the law governing the exercise of that right.

19 Everyone has the right to enter a civil partnership in accordance with the law governing the exercise of that right.

20 Each party to a civil partnership has the right to end the partnership in accordance with the law governing the exercise of that right.

PROHIBITION OF DISCRIMINATION

21 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.

22 A public authority must not unfairly discriminate against any person.

23 For this purpose a public authority unfairly discriminates against a person if, by any provision, criterion or practice, the public authority, on the basis of any of the following characteristics, treats the person, in any area of economic, social, political, cultural or civil life, less favourably than the public authority treats or would treat other persons who do not share that characteristic:

- (a) religion or belief;
- (b) political or other opinion;
- (c) race including membership of the Irish Traveller community;
- (d) colour or ethnicity;
- (e) birth, national or social origin or association with a national minority;
- (f) sex, sexual orientation, gender or gender reassignment;
- (g) pregnancy or maternity;
- (h) family or carer status;
- (i) age;
- (j) disability, health status, genetic or other predisposition toward illness;
- (k) language;
- (l) economic status or property;
- (m) identity;
- (n) irrelevant criminal record;
- (o) status of any other kind;
- (p) a combination of any of the characteristics mentioned in paragraphs (a) to (o).

24 Legislation must be enacted to prevent or prohibit unfair discrimination by public authorities.

25 Public authorities must take all appropriate and proportionate measures to eliminate unfair discrimination and, where circumstances so warrant, must in accordance with the law take all appropriate measures to assist or advance persons or groups of persons disadvantaged because of discrimination.

- 26 Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.
- 27 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, to enjoy social, cultural and occupational integration and to participate in the life of the community.

DEMOCRATIC RIGHTS

- 28 Everyone has the right, and is to have the opportunity, without discrimination or unreasonable restriction, to participate in the conduct of public affairs, directly or through freely chosen representatives.
- 29 Every eligible person has the right, and is to have the opportunity, without discrimination or unreasonable restriction, to vote and be elected at periodic elections held at regional or local level under a system of proportional representation that guarantees the free expression of the will of the electors through adopting universal and equal suffrage and being held by secret ballot.
- 30 Everyone has the right to have access, on general terms of equality, to the public service and public office.
- 31 Legislation must be enacted to provide for local government safeguards equivalent to those contained in the Belfast Agreement for inclusive, proportionate and equitable participation in regional government.
- 32 Public authorities must take effective measures to facilitate the full and equal participation of women in political and public life, including, where appropriate, the taking of temporary special measures to achieve that outcome.
- 33 The membership of public bodies must, as far as practicable, be representative of society in Northern Ireland.
- 34 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 that are compatible with the Northern Ireland Bill of Rights.

EDUCATION RIGHTS

- 35 Education must be directed towards promoting human rights, equality, dignity of the person and respect for diversity and tolerance.
- 36 Every child has the right to access the full education curriculum.

FREEDOM FROM VIOLENCE, EXPLOITATION AND HARASSMENT

- 37 Everyone has the right to be free from all forms of violence and harassment, from whatever source (whether public or private), including but not limited to:
- (a) domestic violence or harassment;
 - (b) sexual violence or harassment;
 - (c) gender-related violence or harassment;
 - (d) sectarian violence or harassment;
 - (e) violence or harassment motivated by hate on the basis of any characteristic mentioned in paragraph 23.
- 38 Everyone has the right to be protected from sexual exploitation and sexual and other forms of trafficking.
- 39 Public authorities must take all appropriate measures to ensure protection of the rights in items 37 and 38.

RIGHT TO IDENTITY AND CULTURE

- 40 The people of Northern Ireland have the right to identify themselves, and be accepted, as Irish or British or both, as they choose, without discrimination and unaffected by any change in the status of Northern Ireland.
- 41 The people of Northern Ireland have the right, without discrimination and unaffected by any change in the status of Northern Ireland, to hold Irish or British citizenship or both, as they choose, in accordance with the law governing the exercise of that right.
- 42 Public authorities must fully respect, on the basis of equality of treatment, the identity and ethos of both main communities in Northern Ireland. A person relying on this provision must not do so in a manner that is inconsistent with the rights of others.
- 43 Everyone with a particular national, ethnic, religious, linguistic or cultural background has the right, in community with other persons of that background and whether in public or in private, to enjoy their culture, to declare and practice their religion and to use their language. A person exercising that right must not do so in a manner that is inconsistent with the rights of others.
- 44 Public authorities must encourage a spirit of tolerance and dialogue and must take effective measures to promote mutual respect, understanding and co-operation among all persons living in Northern Ireland, irrespective of race, ethnicity, language, religion or political opinion.
- 45 A person must not be required 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 have.

LANGUAGE RIGHTS

- 46 Everyone belonging to a linguistic minority has the right, where practicable, to learn or be educated in and through their own language.
- 47 Everyone has the right to access services essential to life, health or security through communication in a language (including sign language) and a medium that they understand assisted, if necessary, by an interpreter or other means.
- 48 Public authorities must, as a minimum, act compatibly with the obligations undertaken by the Government of the United Kingdom under the European Charter for Regional or Minority Languages in respect of the support and development of Irish and Ulster-Scots.

RIGHTS OF VICTIMS

- 49 Every victim of crime has the right to appropriate material, medical, psychological and social assistance.
- 50 Every victim of crime has the right to be informed about the progress of the investigation into the crime and relevant legal proceedings.
- 51 Legislation must be enacted to recognise all the victims of the Northern Ireland conflict and to ensure that their rights are protected, including their rights to access a redress scheme directed to such victims and to appropriate material, medical, psychological and social assistance.

*RIGHT TO CIVIL AND ADMINISTRATIVE
JUSTICE*

- 52 Everyone has the right to access information held by public authorities in accordance with the law governing the exercise of that right.
- 53 Everyone has the right to administrative action that is lawful, procedurally fair, rational, proportionate and taken within a reasonable time.

- 54 Public authorities must give reasons for their decisions and, where practicable, provide appropriate mechanisms for internal review or appeal of those decisions.

RIGHT TO HEALTH

- 55 Everyone has the right to the highest obtainable standard of physical and mental health.
- 56 Everyone has the right to access emergency medical treatment and essential primary healthcare.
- 57 Everyone has the right to access, without charge at the point of issue and within a reasonable time, appropriate healthcare and social care services.
- 58 Every woman and girl has the right to access gender-sensitive and appropriate healthcare services and information.

RIGHT TO AN ADEQUATE STANDARD OF LIVING

- 59 Everyone has the right to a standard of living that is adequate for them 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.
- 60 A person must not be allowed to fall into destitution.

RIGHT TO ACCOMMODATION

- 61 Everyone has the right to accommodation that is adequate and appropriate to their needs.
- 62 A person must not be forced out of their home by threats or harassment or evicted without an order of a court.
- 63 Everyone has the right to appropriate emergency accommodation.

RIGHT TO WORK

- 64 Everyone has the right to work, including the right to have the opportunity to gain their living by work that 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.
- 65 Everyone has the right to enjoy just and favourable conditions of work including:
- (a) remuneration that 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. a decent living for themselves and their families;
 - (b) safe and healthy working conditions;
 - (c) equal opportunity for everyone to be promoted in their employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
 - (d) rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

66 Every worker has the right to strike and the right to engage in collective bargaining in accordance with the law governing the exercise of those rights.

67 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.

ENVIRONMENTAL RIGHTS

68 Everyone has the right to have the environment protected so that the health and well-being of present and future generations are fostered consistent with the promotion of justifiable economic and social development.

69 Public authorities must take all appropriate measures, including legislative measures, to:

- (a) limit pollution and ecological degradation;
- (b) promote conservation and biodiversity; and
- (c) secure the sustainable development and use of natural resources.

SOCIAL SECURITY RIGHTS

70 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.

CHILDREN'S RIGHTS

71 Public authorities must respect, and ensure that every child enjoys without discrimination (whether directed to the child or their parent or legal guardian or other person who has care of them), the rights set out for children in the Northern Ireland Bill of Rights.

72 Public authorities must ensure that, in all actions concerning a child, whether undertaken by public authorities or private institutions, the best interests of the child is the primary consideration. In adoption proceedings, or any other proceedings concerning the placement of a child, the best interests of the child must be the paramount consideration.

73 Public authorities must take all appropriate measures to ensure the right of every child to engage in play and recreational activities that are safe and appropriate to the age of the child.

74 Every child who is temporarily or permanently deprived of their family environment has the right to special protection and assistance for so long as they need it.

75 Public authorities must take all appropriate measures, including legislative, administrative, social and educational measures, to protect every child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while they are in the care of a parent, legal guardian or any other person.

76 Public authorities must take all appropriate measures to ensure the right of every child to be informed of their rights and, in all matters affecting them, to have their views respected and considered paying due regard to the child's age, understanding and capacity.

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

SCHEDULE 3

Section 14(6).

REMEDIAL ORDERS

Orders

- 1 (1) A remedial order may—
 - (a) contain any incidental, supplemental, consequential or transitional provision that the person making it considers appropriate;
 - (b) be made so as to have effect from a date earlier than that on which it is made;
 - (c) make provision for the delegation of specific functions;
 - (d) make different provision for different cases.
- (2) The power conferred by sub-paragraph (1)(a) includes—
 - (a) power to amend primary legislation (including primary legislation other than that which contains the incompatible provision); and
 - (b) power to amend or revoke subordinate legislation (including subordinate legislation other than that which contains the incompatible provision).
- (3) A remedial order may be made so as to have the same extent as the legislation which it affects.
- (4) No person is to be guilty of an offence solely as a result of the retrospective effect of a remedial order.

Procedure

- 2 No remedial order may be made unless—
 - (a) a draft of the order has been approved by a resolution of each House of Parliament made after the end of the period of 60 days beginning with the day on which the draft was laid; or
 - (b) it is declared in the order that it appears to the person making it that, because of the urgency of the matter, it is necessary to make the order without a draft being so approved.

Orders laid in draft

- 3 (1) No draft may be laid under paragraph 2(a) unless—
 - (a) the person proposing to make the order has laid before Parliament a document that contains a draft of the proposed order and the required information; and
 - (b) the period of 60 days, beginning with the day on which the document required by this sub-paragraph was laid, has ended.
- (2) If representations have been made during that period, the draft laid under paragraph 2(a) must be accompanied by a statement containing—
 - (a) a summary of the representations; and
 - (b) if, as a result of the representations, the proposed order has been changed, details of the changes.

Urgent cases

- 4 (1) If a remedial order (“the original order”) is made without being approved in draft, the person making it must lay it before Parliament accompanied by the required information, after it is made.
- (2) If representations have been made during the period of 60 days beginning with the day on which the original order was made, the person making it must (after the end of that period) lay before Parliament a statement containing—

- (a) a summary of the representations; and
 - (b) if, as a result of the representations, the person considers it appropriate to make changes to the original order, details of the changes.
- (3) If sub-paragraph (2)(b) applies, the person making the statement must—
- (a) make a further remedial order replacing the original order; and
 - (b) lay the replacement order before Parliament.
- (4) If, at the end of the period of 120 days beginning with the day on which the original order was made, a resolution has not been passed by each House approving the original or replacement order, the order ceases to have effect (but without that affecting anything previously done under either order or the power to make a fresh remedial order).

Definitions

5 In this Schedule—

“representations” means representations about a remedial order (or proposed remedial order) made to the person making (or proposing to make) it and includes any relevant Parliamentary report or resolution; and

“required information” means—

- (a) an explanation of the incompatibility that the order (or proposed order) seeks to remove, including particulars of the relevant declaration, finding or order; and
- (b) a statement of the reasons for proceeding under section 14 and for making an order in those terms.

Calculating periods

6 In calculating any period for the purposes of this Schedule, no account is to be taken of any time during which—

- (a) Parliament is dissolved or prorogued; or
- (b) both Houses are adjourned for more than four days.

Northern Ireland

7 (1) This paragraph applies in relation to—

- (a) any remedial order made, and any draft of such an order proposed to be made, by a Northern Ireland Minister; and
- (b) any document or statement to be laid in connection with such an order (or proposed order).

(2) This Schedule has effect in relation to any such order (or proposed order), document or statement subject to the following modifications.

(3) Any reference to Parliament, each House of Parliament or both Houses of Parliament shall be construed as a reference to the Northern Ireland Assembly.

(4) Paragraph 6 does not apply and instead, in calculating any period for the purposes of this Schedule, no account is to be taken of any time during which the Northern Ireland Assembly is dissolved or is in recess for more than four days.

WHERE NEXT FOR A

Bill of Rights

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