



Northern  
Ireland  
Office

Consultation Paper

**A BILL OF RIGHTS  
FOR NORTHERN  
IRELAND: NEXT  
STEPS**

November 2009

## **CONSULTATION PAPER**

### **A BILL OF RIGHTS FOR NORTHERN IRELAND: NEXT STEPS**

This consultation paper was launched on Monday 30<sup>th</sup> November 2009 by the Secretary of State for Northern Ireland, the Rt Hon Shaun Woodward MP.

Responses must be received by Monday 1<sup>st</sup> March 2010.



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**FOREWORD BY RT HON SHAUN WOODWARD MP, SECRETARY OF  
STATE FOR NORTHERN IRELAND**

The need to ensure that people, individually and collectively, should never be subjected to arbitrary rule without the protection of the law led to the establishment of the European Convention on Human Rights, within which fundamental human rights were safeguarded across Europe. These safeguards were enshrined in UK legislation by the Human Rights Act 1998.

For too long issues of human rights and equality in Northern Ireland were seen through the prism of conflict as a kind of ‘zero sum game’ of winners and losers.

As Northern Ireland emerges from conflict it is important that the terms of the debate change.

The need for an additional human rights framework that reflects the particular circumstances of Northern Ireland was recognised in the Belfast Agreement and given shape through the commitment to set up a Bill of Rights Forum as part of the St Andrews Agreement.

A positive future for Northern Ireland must be firmly based on partnership, equality and mutual respect. Over the last twelve years but particularly since the restoration of Devolution in May 2007, Northern Ireland has made huge progress in building that positive future. The fundamental principle of mutual respect for the rights and freedoms of all the people of Northern Ireland has been at the heart of this progress, and still has a crucial role to play in its future success.

What the Government has set out to do in this consultation paper is to take those aspirations – to which everyone could subscribe – and to see how they can be given legislative form through a Bill of Rights for Northern Ireland thus following through on our commitments in the St Andrews Agreement and,

before that, in the Belfast Agreement. I am very grateful to the Northern Ireland Human Rights Commission for their commitment and energy in leading the debate on a Bill of Rights over the past ten years.

The Commission has produced wide-ranging and thorough advice which is very timely, coming as it does in the midst of a debate throughout the UK on rights and responsibilities and the relationship between individuals and the state.

In this consultation paper the Government has identified those areas that have particular application in the Northern Ireland context. It is a sign of a confident democracy that issues of rights and responsibilities which once would inevitably have been a source of conflict can now be discussed and resolved in an atmosphere of mutual respect and understanding.

Equally it is a sign of a maturing democracy that issues around human rights and equality are no longer seen as sectional interests but as part of a necessary framework which is there to protect and benefit the whole community.

I urge everyone with the best interests of Northern Ireland at heart to study this consultation paper carefully and to give us your views.

A handwritten signature in black ink, appearing to read 'Shaun Woodward', with a horizontal line underneath.

**RT HON SHAUN WOODWARD MP**  
**Secretary of State for Northern Ireland**

## **CHAPTER 1: INTRODUCTION**

1.1 The recognition, protection and promotion of human rights is one of the fundamentally important features of any democratic society. In the case of a society which has emerged from a long period of conflict and division, like Northern Ireland, it is important that everyone within that society can have confidence that their human rights will be recognised and protected. The British and Irish Governments recognised this when they declared, in the Belfast (Good Friday) Agreement, their commitment to the protection and vindication of the human rights of all. The British Government went on to establish the Northern Ireland Human Rights Commission (NIHRC) and committed itself to the process of consultation on a Bill of Rights for Northern Ireland in which it is now engaged. The Government is grateful to the NIHRC for its full and detailed Advice on a Bill of Rights, which has informed much of the consideration in this consultation paper.

1.2 Since those commitments were made, Northern Ireland has continued its transformation into a peaceful, stable and prosperous society. But the legacy of Northern Ireland's past can still be traced in many aspects of life for people in Northern Ireland today. For that reason, the British Government recognises that there remains a case for additional protections for the rights and freedoms of the people of Northern Ireland, which reflect the particular circumstances of Northern Ireland.

1.3 The Government is seeking views in this consultation paper on precisely what those protections might be, how they might be expressed and how they might operate in practice. The Government believes that additional protections should be considered in a range of areas, including: equality, representation and participation in public life; identity, culture and language; sectarianism and segregation; and victims and the legacy of the conflict; and criminal justice. In the later chapters of this consultation paper, the recommendations made by the NIHRC in these areas are discussed in detail and views are sought on a number of questions.

1.4 There have also been some very significant wider developments in protections for rights and responsibilities across the United Kingdom since the Belfast Agreement, and any consideration of a Bill of Rights for Northern Ireland must be seen against this background. Perhaps the most notable of these is the introduction of the Human Rights Act 1998, which enshrines in domestic law the fundamental protections of the European Convention on Human Rights. But the entitlements, protections and responsibilities of individuals within the UK have continued to develop in a wide range of areas, in legislation and in practice, most recently, for example, with the launch of a consultation in November 2009 on the inclusion of new rights for patients in the NHS constitution in England<sup>1</sup>. There is also a national debate now underway about whether people's entitlements and responsibilities should be drawn together into a Bill of Rights and Responsibilities for the UK. That debate, and the contribution made to it by the NIHRC Advice, is discussed later in this consultation paper.

1.5 The Government acknowledges that there will be a range of views within Northern Ireland on the merits of a Bill of Rights for Northern Ireland and what might be included in it. The Government welcomes a full debate on these issues, and encourages everyone in Northern Ireland to contribute to this debate. The Government believes that a Bill of Rights which has the support of the people of Northern Ireland could play an important role in underpinning the peace, prosperity and political progress of Northern Ireland: by encouraging the full and equal participation of all people in Northern Ireland society; by building and affirming respect for all cultures and communities; by building confidence in public services and bodies in Northern Ireland; and by protecting those made vulnerable by the particular circumstances of Northern Ireland.

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<sup>1</sup> [http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH\\_108012](http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_108012)

## **CHAPTER 2: THE BELFAST AGREEMENT AND THE NIHRC ADVICE**

2.1 The Belfast (Good Friday) Agreement concluded in April 1998 provides the template for a new future, setting out the vision of an enduring constitutional and political settlement to be realised through fundamental reform and progress across a wide range of institutions and policies. The protection and development of human rights is a central element in this vision. Against the background of Northern Ireland's history of division and conflict, the parties to the Agreement affirmed their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community.

2.2 In the Agreement the Government committed to a number of important actions in the human rights and equality fields. It subsequently delivered on all of these, through measures which included:

- legislation to ban public authorities from discriminating on the ground of religious belief or political opinion, and requiring them to carry out their functions with due regard to the need to promote equality of opportunity;
- the creation of an Equality Commission to keep the effectiveness of these provisions under review and advise public authorities on their equality duties;
- the incorporation into domestic law, through the Human Rights Act 1998 (HRA), of the "Convention rights" set out in the European Convention on Human Rights (ECHR); and
- the establishment of the Northern Ireland Human Rights Commission (NIHRC), with a broad and independent remit.

2.3 As the then Secretary of State (Peter Mandelson) said in September 2000, these and other steps have helped "to give Northern Ireland the sort of rights-based society that other countries will look to as a model of excellence".

In the equality field in particular, the new model which flowed from the Agreement has been described as “both unique and world-leading”.<sup>2</sup>

2.4 The Agreement made clear that once the NIHRC was established an important task for it would be:

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

- the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and
- a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.”<sup>3</sup>

2.5 The NIHRC was given that task as part of its statutory remit in the Northern Ireland Act 1998. In 2003, the Joint Declaration by the British and Irish Governments noted that the NIHRC had undertaken significant work towards a Bill of Rights for Northern Ireland. It went on to confirm:

“At the conclusion of that process, and after consultation with the parties, the British Government is committed to bringing forward legislation at Westminster where required to give effect to rights

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<sup>2</sup> Barnett Donaghy, T.(2002) ‘Mainstreaming: Northern Ireland’s Participative-Democratic Approach’, Paper presented to the Jubilee conference of the Australasian Political Studies Association, Australian National University, Canberra, October 2002.

<sup>3</sup> Belfast Agreement, “Rights, safeguards and equality of opportunity”, pp 16-17

supplementary to the ECHR to reflect the particular circumstances of Northern Ireland.”

2.6 To assist the process further, following the St Andrews Agreement in 2006, the Government established a Bill of Rights Forum to help build consensus and support for a future Bill of Rights. The work of the Forum, which reported in March 2008, demonstrated the complexity of the issues and the importance of a full and wide-ranging debate on them. Despite the diversity of opinion across its membership, the Forum produced a comprehensive report covering a wide range of areas that might be considered for inclusion in a Bill of Rights. The Government is grateful to the Chair of the Forum and to all those involved, for their dedication, their tireless work and their expertise.

2.7 The NIHRC gave detailed consideration to the Forum’s recommendations in formulating its own Advice to Government. In December 2008, the NIHRC delivered that Advice, including some 78 recommendations for new substantive rights, together with a number of others relating to the process of implementation and enforcement. The substantive recommendations are grouped under the following headings, and are set out in full in appendix 3:

- 1 Right to life
2. Right to liberty and security
3. Right to a fair trial and no punishment without law
4. Right to marriage or civil partnership
5. Right to equality and prohibition of discrimination
6. Democratic rights
7. Education rights
8. Freedom of movement
9. Freedom from violence, exploitation and harassment
10. Right to identity and culture
11. Language rights
12. Rights of victims

13. Right to civil and administrative justice
14. Right to health
15. Right to an adequate standard of living
16. Right to accommodation
17. Right to work
18. Environmental rights
19. Social security rights
20. Children's rights

2.8 The Government is grateful to the NIHRC for this Advice. The task given to the NIHRC was a challenging one, and the Chief Commissioner and her fellow members of the NIHRC are to be commended for their commitment and energy in meeting that challenge.

2.9 This Consultation Paper sets out the Government's initial response to the NIHRC's recommendations, and invites the views of consultees, including the people of Northern Ireland and the political parties, on the way ahead.

## **CHAPTER 3: HUMAN RIGHTS ACROSS THE UK – THE WIDER CONTEXT**

3.1 The identification and protection of fundamental rights and freedoms has been a central tenet of western history for many centuries. In several countries, these rights have been set out in a distinctive format such as a Bill of Rights or a national constitution, with the Government and courts having a special responsibility to safeguard them. While the UK does not have a codified constitution, the ECHR, agreed in 1950, is a binding international agreement that the UK helped draft and has sought to comply with for over half a century. The ECHR enshrines certain fundamental rights and freedoms, mostly civil and political in nature. Since coming into force in 2000, the HRA has made the “Convention rights” a full part of UK law. It has enabled cases of alleged breaches of the ECHR rights to be dealt with by the UK courts, whereas previously they could be heard only by the European Court of Human Rights in Strasbourg. .

3.2 In Northern Ireland, human rights issues and concerns have long been at the forefront of debate. The first proposal for a Human Rights Bill for Northern Ireland (and the creation of a Human Rights Commission) was made by Shelagh Murnaghan, a member of the Stormont Parliament, in 1964<sup>4</sup>. Resentments about discrimination and the denial of rights were an important factor in the Civil Rights protests of the late 1960s and the conflict which followed. The emergency legislation which was required to combat terrorism in Northern Ireland was also the focus of much controversy about the balance to be struck between safeguarding the rights of the community as a whole and protecting the rights of individuals.

3.3 The HRA, by making the Convention rights enforceable in our domestic courts, marked a huge step forward in giving people across the UK a clear legal statement of their basic rights and fundamental freedoms. Its effects continue to unfold as the courts apply fundamental human rights principles in a wider range of cases – as one commentator has remarked, the HRA is:

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<sup>4</sup> See C. Harvey and A. Schwartz, “Designing a Bill of Rights for Northern Ireland”, NILQ 60(2), 182.

“.....like a powerful, but slow-acting solvent, gradually dissolving the blockages [in] fully applying ECHR principles .....”<sup>5</sup>

3.4 But the Government has always said that the HRA is not the end of the story; and it remains open to developing additional formulations of rights, both nationally and (where that can be justified by the particular circumstances, as the Agreement requires) in relation to Northern Ireland alone.

3.5 It is also important to note that the ECHR principles which were set out in the HRA are by no means the only international rights standards to which the UK is committed. The UK is a signatory to a number of human rights instruments, including, for example, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the UN Convention on the Rights of Persons with Disabilities. Although the vast majority of these have not been incorporated into UK law in their entirety like the HRA, the UK's obligations under them are met through a combination of entitlements in domestic legislation, policy schemes and administrative action. The decision to incorporate the HRA directly into domestic law was an exceptional one, reflecting the central role that the fundamental principles laid down in ECHR have played in shaping the protections and entitlements provided by legislation in the UK today.

3.6 Now that the HRA has been in force for nearly 10 years, and at a time of rapid change, financial uncertainty and global challenges, the Government believes that the time is right to re-examine how best to protect fundamental freedoms and foster mutual responsibility across the UK. The publication of a Green Paper by the Lord Chancellor in March this year has therefore

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<sup>5</sup> Francesca Klug, Paper to JUSTICE HRA Seminar, August 2002.

launched a national debate on rights and responsibilities, with a view to possible legislation after the next General Election.<sup>6</sup>

3.7 The Government has made clear that it sees no incompatibility between a possible UK Bill of Rights and Responsibilities and a Bill of Rights for Northern Ireland, reflecting the particular circumstances of Northern Ireland. The Government believes that if a Bill of Rights for Northern Ireland were to be introduced, creating specific rights justified by the particular circumstances of Northern Ireland, it is important that no steps taken in the wider UK context should undermine or diminish those protections. It is also important, however, that decisions reached in respect of Northern Ireland are taken with full awareness of the developing national debate about the best way of protecting our rights and discharging our mutual responsibilities.

3.8 As the Government explains in the Green Paper, it believes that any new constitutional instrument should encapsulate not only the rights we enjoy but also the responsibilities we owe towards one another, in the form of a national Bill of Rights and Responsibilities. It explores some of the types of rights and responsibilities that might be drawn together in such a national Bill. It examines rights in the fields of criminal justice, equality, good administration, social justice and the welfare state, healthcare, children and living within environmental limits, whilst also examining responsibilities related to criminal justice, education and the family.

3.9 In the Green Paper, the Government discusses a range of forms that a national Bill of Rights and Responsibilities might take. One option would be a declaration of rights and responsibilities, which would bring together a common set of fundamental beliefs and values. Such a declaration would be intended to have no legal effect in the courts, but could provide a single expression of what the citizen can expect from the state, and could include broad aspirations in areas where traditional legal sanctions would not be appropriate. It might follow the model of the “Directive principles of social

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<sup>6</sup> “Rights and Responsibilities: Developing our Constitutional Framework”, March 2009 (Cm 7577)

policy” found in the Constitution of Ireland, which are intended to guide the Oireachtas in the making of laws.

3.10 Another option discussed in the Green Paper is the inclusion in a national Bill of a set of general interpretative provisions. These would contain guidance from Parliament to the courts or public authorities as to how discretion should be exercised or the law developed or interpreted. They would not override existing legislation or be directly enforceable themselves, but they could be taken into account by the courts in deciding cases brought under existing law.

3.11 The final option discussed in the Green Paper is an approach whereby the new provisions would be legally enforceable, following the model set out in the HRA. The Government makes clear in the Green Paper that it does not consider that a generally applicable model of directly legally enforceable rights or responsibilities would be the most appropriate for a future national Bill of Rights and Responsibilities.

3.12 The consultation on the Green Paper is still ongoing, and the Government has made clear that no legislation will be introduced on a UK Bill of Rights and Responsibilities in advance of the next General Election. However, it is apparent that many of the proposals made by the NIHRC in its Advice are closely relevant to this ongoing debate and, if taken forward, they would need to be considered in this context.

3.13 The debate about the services that people in the UK can expect, and the responsibilities that they owe to the state, and to each other, is a constantly evolving one. Apart from the HRA, existing legislation already provides rights to individuals in a range of areas, as well as placing obligations on them. The Freedom of Information legislation<sup>7</sup>, for example, provided people with a statutory right of access to recorded information held by public authorities. Since the Green Paper was published, further proposals

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<sup>7</sup> The Freedom of Information Act 2000 covering England, Wales and Northern Ireland, and the Freedom of Information (Scotland) Act 2002 covering Scotland.

have been announced by the Prime Minister as part of the Government's "Building Britain's Future" plan, which include the establishment of new enforceable rights for patients and improved entitlements to early education for young children. In devolved areas such as these, it is for the Northern Ireland Executive to consider what provision should be made for Northern Ireland. However, as the wider debate demonstrates, rights and entitlements to public services do not need to be confined to a Bill of Rights.

3.14 The NIHRC has proposed rights in a wide range of areas, as set out in para 2.7 above, and many of these areas are currently the subject of active consideration in the debate on a national Bill of Rights and Responsibilities. The Government's initial assessment is that over half of the rights proposed in the NIHRC's Advice are equally as relevant to the people of England, Scotland and Wales as they are to the people of Northern Ireland and, therefore, fall to be considered in a UK-wide context. Of the rights proposed by the NIHRC, the Government believes that the following groups of proposed rights fall into this category:

- Right to marriage or civil partnership
- Education rights
- Freedom of movement
- Right to civil and administrative justice
- Right to health
- Right to an adequate standard of living
- Right to work
- Environmental rights
- Social security rights

In addition, some of the proposed rights in the other groupings fall into the same category.

3.15 The Government has reached this view following careful consideration of all the proposals made by the NIHRC. It is important to emphasise that the Government does not believe the rights listed above to be any less significant and important for the people of Northern Ireland than those considered for inclusion in a Bill of Rights for Northern Ireland. But it is the Government's

view that the introduction of such rights in Northern Ireland alone would either be unworkable in practice, or could give rise to unjustified inequalities across the UK.

3.16 The subject of this consultation paper is a Bill of Rights for Northern Ireland, and Government does not propose to address in detail in this paper those rights that it considers to fall outside the scope of such a Bill. However, it is worth setting out an example of how this judgement has been reached.

3.17 One of the NIHRC's proposals is that:

“Everyone has the right to the highest attainable standard of physical and mental health. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right”. (*Advice, p.112*)

Health is one of the most important issues for individuals and communities throughout the UK, and issues in the healthcare field are discussed in the Green Paper for possible inclusion in a national Bill of Rights and Responsibilities. However, if such a right is to be considered as meeting the test of reflecting the particular circumstances of Northern Ireland and the principles of mutual respect for the identity and ethos of both communities, there would need to be evidence that the case for this particular right within Northern Ireland is demonstrably greater or different in nature to that in the rest of the UK, due to the particular circumstances of Northern Ireland.

3.18 The NIHRC says that the Executive has accepted that the overall health status of the population in Northern Ireland requires attention and has committed itself to a programme of action to improve health and reduce health inequalities. Such programmes are also underway in the rest of the country. In fact, on a broad measure, the provision in Northern Ireland is in line with that in the rest of the UK: expenditure per head on health in Northern Ireland

in 2008/09 was £1,835, whereas the UK average was £1,796<sup>8</sup>. It is for the Executive to consider how best to provide services that meet the health needs of the people of Northern Ireland, and it has a range of options open to it, including whether to introduce specific enforceable entitlements for patients. But the introduction of a measure as far-reaching as a right to the highest attainable standard of health, which people can seek to enforce in the courts, is a step that the Government believes goes far beyond service provision and, if contemplated, should be considered at a national level.

3.19 The NIHRC also argues that a right to the highest attainable standard of physical and mental health is justified in Northern Ireland because the conflict in Northern Ireland directly impacted on the health of its population through “loss of life, injury and trauma”. Clearly, the legacy of the conflict forms a part of the particular circumstances of Northern Ireland, and the Government accepts that measures to address the impact of this legacy should be considered for inclusion in a Bill of Rights for Northern Ireland. But the Government does not believe that a statutory entitlement to the highest attainable standard of health is the most appropriate way to address that special need, and the Government believes it would be very difficult to justify the introduction of such an entitlement in Northern Ireland when that is not available to the rest of the UK population. The impact of the conflict on the health of the population of Northern Ireland could more appropriately be addressed through other measures, including, for example, the NIHRC recommendation earlier in its Advice that “victims of the Northern Ireland conflict” should have rights to “redress and to appropriate material, medical, psychological and social assistance” (*Advice, p.108*).

3.20 The Government believes that concerns about health, employment, work and other economic and social issues of this nature are of enormous significance to **all** communities in the UK, and should therefore properly be addressed in the national debate on a possible Bill of Rights and Responsibilities which was launched by the publication of the Green Paper.

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<sup>8</sup> “Public Expenditure Statistical Analyses 2009”, HM Treasury, Table 9.15 (p140).

The national debate is also the right context in which to consider both the opportunities and the risks in attempting to establish legally enforceable economic and social rights – including the challenge of establishing with precision what such rights would actually mean in practice; the considerable danger that the courts could be drawn into resource allocation decisions for which they do not have any democratic mandate and which cannot take account of broader public policy considerations – including, crucially, affordability; and the need for the democratically elected and accountable Government and Executive to retain full responsibility for the prioritisation of expenditure. The Government believes that these issues are common across the UK and should therefore best be addressed at national level rather than solely in relation to Northern Ireland.

## **CHAPTER 4: SHAPING A BILL OF RIGHTS FOR NORTHERN IRELAND**

4.1 The areas which might be covered by a Bill of Rights for Northern Ireland are discussed in the following chapters. This discussion focuses on **32** of the rights proposed in the Advice which, in the Government's view, can be argued to reflect the particular circumstances of Northern Ireland and the principles of mutual respect for the identity and ethos of both communities. These proposals have been divided into five broad categories, each dealt with in a chapter, which are:

- equality, representation and participation in public life;
- identity, culture and language;
- sectarianism and segregation;
- victims and the legacy of the conflict; and
- criminal justice.

4.2 In these chapters, the Government considers the merits of establishing rights in the areas covered, as opposed to meeting identified needs through a policy scheme, administrative action or normal statutory entitlement, and seeks views on how such rights might be expressed. The Government would welcome general views on all the issues covered in this consultation paper, but it also poses some specific questions. (For convenience, the proposals made by the Government are collected in Appendix 1; the questions asked of consultees collected in Appendix 2; and Appendix 3 lists all the substantive recommendations in the NIHRC Advice.)

4.3 In considering the shape of any future Bill of Rights for Northern Ireland, the Government has borne in mind a number of factors which flow from the Belfast Agreement remit. First, it is essential to keep in view the wider purpose of the Belfast Agreement, which contained the commitment that the NIHRC would consult and advise on a Bill of Rights for Northern Ireland. The participants in the multi-party negotiations committed, in their Declaration of Support:

“to strive in every practical way towards reconciliation and rapprochement within the framework of democratic and agreed arrangements”<sup>9</sup>.

Clearly therefore, a Bill of Rights for Northern Ireland should if possible contribute to reconciliation, tolerance and mutual trust,. While that does not mean that any group should be allowed a veto in the area of fundamental rights, any proposals for new rights which prove to be highly controversial and contested would have to be supported by a particularly compelling case. A Bill of Rights needs to attract the broadest possible degree of support and gain enduring acceptance, not become a cause of division.

4.4 Second, it is not the purpose of a Bill of Rights to set detailed public policy. Successive governments – both in Westminster and Stormont – will set their own policy agendas and spending priorities, based on their own assessment of social needs, taking into account the prevailing circumstances at any particular time, and they will be accountable to Parliament or to the Assembly. A Bill of Rights could set out fundamental principles to which any future policies should adhere, but it should not cut across or undermine the roles of the Executive and the legislature, for example by expanding the role of the courts in enforcing rights in a way which cuts across the ability of a democratically elected legislature to make decisions about the allocation of public funds.

4.5 Third, as well as safeguarding the heritage of the Belfast Agreement, it will be important to ensure that the fundamental changes brought about across the UK by the ongoing implementation of the HRA are not compromised or weakened by a Bill of Rights for Northern Ireland. The HRA is a foundational document, part of whose strength lies in its universal application; and the Government therefore sees a strong case for retaining a uniform framework of HRA enforcement mechanisms across the UK. There would need to be particularly compelling arguments in this area to outweigh

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<sup>9</sup> Belfast Agreement, “Declaration of Support”, p1.

the risks of sacrificing such a framework. (These issues are considered further in chapter 10 of this consultation paper.)

4.6 Finally, more than half the rights proposed by the NIHRC in its Advice fall in or have some effect on areas which are now the responsibility of the devolved Assembly and Executive. Because the Agreement specified that a Bill of Rights for Northern Ireland should be Westminster, not Assembly, legislation, it is incumbent on the UK Government to reach a view on what rights it should contain before bringing forward legislation. This does **not** however mean that the Government is pre-empting the Executive's right to set its own policy in areas for which it is responsible and, as set out in the following chapters of this paper, the Government intends to consult the Executive about any rights relating to devolved areas before reaching any final decisions. Although this Consultation Paper sets out its initial views, the Government is open to argument and discussion about where the line should be drawn in respect of rights to be included in a future Bill of Rights for Northern Ireland. And, of course, whatever decisions are reached on the content of a Bill of Rights at the end of this consultation process, it remains entirely open to the Northern Ireland Assembly to make further provision for Northern Ireland in any devolved areas if it chooses to do so.

## **CHAPTER 5: RIGHTS RELATING TO EQUALITY, REPRESENTATION AND PARTICIPATION IN PUBLIC LIFE**

5.1 In this chapter, the Government discusses recommendations made by the NIHRC which relate to equality, representation and participation in public life. Equal treatment by public authorities and by society, and fair representation in government and public life, are amongst the core principles underpinning Northern Ireland society today, and were central themes in the Belfast Agreement.

5.2 For ease of reference, the recommendations made by the NIHRC are set out, together with the numbering used in paragraph 2.7 and Appendix 3, at the start of each section of discussion. Following the discussion on each set of recommendations, the Government poses a set of questions for consultees.

### **NIHRC 5: The right to equality and prohibition of discrimination**

- 5.1 Everyone is equal before and under the law and has the right to equal protection and equal benefit of the law, including the full and equal enjoyment of all rights and freedoms.**
- 5.2 No one shall be unfairly discriminated against by any public authority on any ground such as: race, membership of the Irish Traveller community, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender, identity, age, disability, health status, genetic or other predisposition toward illness, irrelevant criminal record, property or a combination of any of these grounds, on the basis of characteristics associated with any of these grounds, or any other status.**
- 5.3 Unfair discrimination consists of any provision, criterion or practice which has the purpose or effect of impairing the ability of any person to participate on an equal basis with others in any area of economic, social, political, cultural or civil life.**

**5.4 Without prejudice to the immediate effect of Recommendations on the Right to Equality and Prohibition on Discrimination, legislation must be enacted to prevent or prohibit unfair discrimination.**

**5.5 Public authorities must take all appropriate measures to eliminate unfair discrimination, and where circumstances so warrant and in accordance with the law, must take all appropriate and proportionate measures to ameliorate the conditions of disadvantaged groups, including those individuals or groups disadvantaged because of the prohibited grounds in Recommendation 2**

**5.6 Nothing in a Bill of Rights for Northern Ireland shall preclude any law, programme or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those individuals or groups disadvantaged because of the prohibited means of achieving this objective.**

5.3 Equality is one of the central themes running through the Belfast Agreement. In the “Declaration of Support”, the participants in the multi-party negotiations declared their commitment to “partnership, equality and mutual respect”. The two Governments affirmed in the Agreement that the power of the sovereign government in Northern Ireland would be:

“...founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and just and equal treatment for the identity, ethos and aspirations of both communities.”<sup>10</sup>

5.4 Following the Agreement, wide-ranging reforms in this area were implemented through the Northern Ireland Act 1998 (“the 1998 Act”). These included the enactment of innovative equality legislation which required public authorities to carry out their functions with due regard to the need to promote equality of opportunity, and re-enacted the prohibition against discrimination on the grounds of religious belief or political opinion. The 1998 Act also

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<sup>10</sup> Belfast Agreement, Article 1 (p28)

established the Equality Commission to monitor the effectiveness of the equality provisions and advise public authorities on their duties.

5.5 In its Advice the NIHRC proposed seven new rights in this area, but only six are considered in this section. The last proposal made by the NIHRC – requiring public authorities to take all appropriate measures to promote the rights of older persons and those who are disabled and enable them to enjoy social, cultural and occupational integration – appears to be of equal importance across the UK rather than having a distinctive resonance in Northern Ireland alone. The Government therefore believes that any question of a right in this area (as opposed to specific legislative provision which rests within the power of the Executive and Assembly) should be addressed further in the national rather than the regional debate.

5.6 It is worth setting out in more detail the context for any new equality and discrimination rights which is created by sections 75 and 76 of the 1998 Act. Section 75 provides that public authorities are required, in carrying out their functions, to have due regard to the need to promote equality of opportunity between different individuals and groups – that is, between persons of different religious belief, political opinion, racial group, age, marital status, or sexual orientation; between men and women generally; between persons with a disability and persons without; and between persons with dependants and persons without. There is also a further duty (section 75(2)) under which public authorities must have regard to the desirability of promoting good relations between people of different religious belief, political opinion or racial group. These duties to promote equality of opportunity and good relations are an important and innovative development, building on the more traditional model of statutory prohibitions on discrimination. The anti-discrimination approach is however also included in the 1998 Act: section 76 states that it is unlawful for public authorities to discriminate against anyone on the ground of religious belief or political opinion.

5.7 The section 75 duty to promote equality of opportunity has been implemented in Northern Ireland (under Guidance issued by the Equality

Commission) through a requirement on public authorities to mainstream equality – that is, to engage directly with equality issues in the course of their policy-making, and to have an **Equality Scheme** setting out their arrangements for fulfilling the duty and consulting on the likely impact of their policies. As indicated earlier (see paragraph 2.3) an academic study commented in 2002 that:

“Northern Ireland’s model of mainstreaming is both unique and world-leading”.

5.8 The equality system established under the 1998 Act is therefore an important achievement flowing from the Agreement. While comparable legislative approaches have subsequently been taken forward in other jurisdictions (for example, in the Government’s Equality Bill 2009, applying to Great Britain, which is currently before Parliament), and the Northern Ireland system may well be capable of further development and improvement to reflect societal changes since 1998, it is important that its essential functioning is not compromised.

5.9 The equality framework set out in the 1998 Act is not, of course, the only legislation providing protection against discrimination in Northern Ireland. Northern Ireland has a comprehensive framework of equality and anti-discrimination law which dates back to 1970 when equal pay legislation was first introduced. This framework of legislation provides protections against discrimination on the grounds of race, religion, sex, age, disability, sexual orientation and gender reassignment. The early legislation was directed mainly at discrimination in the field of employment, but recent legislation has gone wider, such as the Equality Act (Sexual Orientation) Regulations 2006, for example, which make it unlawful to discriminate on grounds of sexual orientation in the provision of goods, facilities and services, education and public functions.

5.10 Article 14 of the ECHR, which was incorporated into domestic law in the HRA, provides a general protection against discrimination on any ground,

but only in the protection of the other Convention Rights: it cannot be invoked unless another Convention right is engaged. The Twelfth Protocol to the ECHR does contain a general right to non-discrimination, but the United Kingdom has neither signed nor ratified this instrument.

5.11 The NIHRC explains that its aim is to create a “freestanding equality provision”, similar in nature to the Twelfth Protocol. In **recommendation 5.1**, it produces a free-standing declaration of equality and in **recommendation 5.2** it produces an associated free-standing protection from “unfair discrimination” by public authorities. These recommendations would clearly impact on section 76 (and other Northern Ireland anti-discrimination legislation), by greatly extending the range of grounds on which a public authority should not “unfairly discriminate”. Section 76 sets out two protected grounds (religious belief and political opinion), whereas the NIHRC’s proposed right sets out 27. It appears from the wording of the proposal that these grounds are provided only as examples, and that the right would in fact be against unfair discrimination on **any** ground – not only the listed categories but also “any other status”. Such freestanding and unlimited protection against discrimination would be a new step in UK law.

5.12 These recommendations would also significantly widen the coverage of anti-discrimination law by prohibiting discrimination by a much larger range of bodies. The term “public authority” in section 76 refers to a specific set of bodies defined in that section, whereas NIHRC intends that its proposed new provisions should apply to the much wider range of bodies which are public authorities for the purposes of the HRA.

5.13 The proposed right would be against **unfair** discrimination, which is defined in **recommendation 5.3**. It is not clear from the NIHRC’s proposals whether a difference in treatment would be unlawful if it could be justified on public policy or other grounds. There are many ways in which the status of an individual may have an impact on their entitlements or treatment and the Government does not believe that such differences in treatment should be made unlawful where there is an objective justification for them. For example,

an individual's eligibility to vote at elections in the UK depends on his or her status in a number of ways, including his or her age, nationality and country of residence, for objective public policy reasons. The Government is concerned that if the potential grounds for unfair discrimination were unlimited in this way, it would be very difficult for individuals and organisations (including, for example, employers and public authorities) to be clear about whether particular actions would be considered lawful. There would be considerable scope, particularly in the early stages, for legal disputes about whether a particular action constituted "unfair discrimination" and whether any particular attribute should be considered to be a "status" on the grounds of which discrimination was prohibited. This would carry the risk of using up scarce resources on legal proceedings and disrupting the ability of front-line public sector providers to deliver services effectively.

5.14 It is also the case that, in prohibiting discrimination on grounds of religious belief and political opinion, section 76 focuses on core issues which have clearly contributed to the divisions in Northern Ireland, and which were alluded to directly in the Agreement mandate to the NIHRC – which specified that additional rights in a Bill of Rights for Northern Ireland should "reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem ....." (see paragraph 2.4 above). While section 76 is only one of a range of pieces of legislation setting out carefully designated grounds on which discrimination is unlawful (e.g. race and gender), there could be a serious risk that, if the reach of anti-discrimination provisions becomes unlimited, the focus on the core issues identified in the Agreement, and in the other anti-discrimination legislation, could be lost and existing levels of protection against discrimination might, paradoxically, be significantly diluted.

5.15 As noted above, the Advice does not refer to section 75. However, its current operation would almost certainly be affected by the implementation of the proposed rights. One reason is that the duty on a public authority to promote equality of opportunity between specified groups has as one of its aspects the requirement to remove any unjustified discrimination against such groups from its activities. If public authorities were faced with a vastly

increased spread of grounds on which unfair discrimination could be alleged against them, they might find it much more difficult to focus on the nine section 75 categories.

5.16 In addition, **recommendation 5.5** would put a duty on public authorities not only to eliminate unfair discrimination but also to take proportionate measures “to ameliorate the conditions of disadvantaged groups”, including (but not confined to) the 27 categories listed as examples in recommendation 5.2. This potential new duty is arguably quite close to that imposed by section 75 to “promote equality of opportunity” between specified groups, which, as Professor McCrudden has suggested:

“requires looking at the position of [the groups], and then targeting resources to ensure that the differentials are addressed”.<sup>11</sup>

But the crucial change for public authorities would be that whereas section 75 requires them to consider a “closed list” of nine protected groups, the NIHRC Advice would in effect mean that **any** group which regarded itself as disadvantaged – going beyond the 27 listed in recommendation 5.2 – could mount a challenge for more resources to “ameliorate [their] conditions”. There is a danger in such a scenario that if every group in society is potentially a priority, then in reality none of them is. McCrudden describes this concern in the following terms:

“..... the major advantage of a closed list is that public authorities are given a clear legislative steer as to which areas of equality of opportunity are particular policy priorities ..... the greater the spread of grounds, arguably the less the attention each receives, given finite public authority resources”.<sup>12</sup>

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<sup>11</sup> McCrudden, C. “Mainstreaming Equality in Northern Ireland 1998 – 2004: A Review of Issues Concerning the Operation of the Equality Duty in Section 75 of the Northern Ireland Act 1998”, 2004, p.19

<sup>12</sup> McCrudden, op.cit. pp 4-5.

5.17 The Government would therefore have a significant concern that enacting these proposed rights could produce more negatives than positives, in particular by impairing the current equality system. But the Government nevertheless recognises that, since section 75 was enacted, Northern Ireland has developed significantly and thinking about equality has moved on. There have been some criticisms of the procedural burdens which section 75 places on public authorities (and also, through the consultation requirement, on consultee civil society groups), as well as concern that the increase in process has not resulted in commensurate changes in outcomes. The Equality Commission has itself made thoughtful contributions to this debate.<sup>13</sup>

5.18 Against this background, the Government believes that there may be a case, drawing on the NIHRC recommendations, for an equality provision for inclusion in a Bill of Rights for Northern Ireland, but it has concerns, as set out above, about how such a provision might be framed. The Government would strongly support in principle a general statement to the effect that everyone in Northern Ireland is equal before the law and has the right to the equal protection and benefit of the law. However, it would be important to ensure that any such provision did not lead to uncertainty about the extent to which differences in treatment were justified, or weaken the effect of existing protections by diluting the focus on particular disadvantaged groups. The Government also recognises the potential scope for streamlining and updating the current equality system, which will have a bearing on the formulation of any new right.

5.19 The Government will discuss with the Executive (which has responsibility for equality legislation apart from the provisions in the 1998 Act), whether additional equality protections could be included in a Bill of Rights for Northern Ireland. These might take the form of a general declaratory provision that everyone in Northern Ireland is equal before the law and has equal rights; or alternatively a broadening of the existing equality protections to cover more groups.

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<sup>13</sup> See for example “Section 75 – Keeping it Effective”, ECNI, 2008.

## **Consultation questions**

(A) *Do you believe a Bill of Rights for Northern Ireland should contain a statement that everyone in Northern Ireland is equal before the law and has equal rights? What might be the practical and legal implications of such a statement?*

(B) *The grounds on which discrimination in Northern Ireland is currently unlawful include religious belief, political opinion, race, age, gender, gender reassignment, marital status, sexual orientation, and disability. Do you believe that any other “protected categories” particular to Northern Ireland should be added to this list? Some examples might be:*

- *nationality;*
- *national origin;*
- *family or carer status;*
- *irrelevant criminal record.*

(C) *Public authorities also have a duty to have due regard to the need to promote equality of opportunity.*

- *between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;*
- *between men and women generally;*
- *between persons with a disability and persons without; and*
- *between persons with dependants and persons without;*

*Do you believe that they should be given this duty in respect of any other groups?*

## **NIHRC 6: Democratic rights**

- 6.1** Everyone has the right and the opportunity, without any of the distinctions mentioned in Recommendation 2 of the Right to Equality and Prohibition on Discrimination section of this advice and without unreasonable restriction, to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected at genuine periodic elections, which must be by universal and equal suffrage, and must be held by secret ballot, guaranteeing the free expression of the will of the electors.
- 6.3** Elections must be subject to proportional representation at both regional and local level.
- 6.4** A Bill of Rights for Northern Ireland recognises the safeguards contained in the Belfast (Good Friday) Agreement 1998 for inclusive, proportionate and equitable participation in regional government and recommends, by means to be determined in legislation, equivalent safeguards for local government.
- 6.5** Public authorities must take effective measures to facilitate the full and equal participation of women in political and public life, including, where appropriate, the use of temporary special measures.
- 6.6** The membership of public bodies must as far as practicable be representative of society in Northern Ireland.
- 6.7** There must be an independent electoral authority to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with laws which are compatible with a Bill of Rights for Northern Ireland.

## Discussion

5.20 The European Court has said that one of the underlying purposes of the ECHR is the promotion of

“the ideals and values of a democratic society”,<sup>14</sup>

and Article 3 of the First Protocol to the Convention requires that free elections must be held at reasonable intervals by secret ballot. More specifically, the authority and legitimacy of the institutions created in Strand One of the Belfast Agreement depend crucially on the ability of the people of Northern Ireland to exercise free democratic choice and have that choice respected. Historically, there have been concerns about aspects of the fairness of the electoral system in Northern Ireland. So for a number of reasons – and notwithstanding that democratic rights are undeniably of fundamental importance across the whole of the UK – the Government accepts that (with one exception) the recommendations made by the NIHRC under this heading meet the threshold of particular relevance to Northern Ireland which is specified in the Agreement. The exception is the second recommendation, that

*“Everyone has the right to have access, on general terms of equality, to public service”.*

A right on these lines would appear to be potentially relevant across the UK, and there is no evidence that it reflects the particular circumstances of Northern Ireland. The other six recommendations are considered below.

5.21 The Government fully supports the broad purpose of **Recommendation 6.1**. While the key requirements it sets out are already provided for in legislation, the right to vote freely and be elected are so

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<sup>14</sup> *Belgian Linguistic Case (No 1) (1979-80) EHRR 241*; quoted in Starmer K, “European Human Rights Law (London, 1999), p.18

fundamental to a stable, peaceful and inclusive society in Northern Ireland that they would clearly merit inclusion in a Bill of Rights. Two further comments should however be made. First, it would not be feasible for democratic rights to be held and exercised with no regard at all to the distinctions listed in Recommendation 5.2 of the Equality proposals (see previous section), since, for example, it is necessary to have a minimum voting age. It is accepted as both a matter of the International Convention on Civil and Political Rights (Art 25), Article 3 of the First Protocol and the Venice Commission Code of Good Practice in Electoral Matters that the right to vote and to stand for election may be subject to reasonable restrictions, for example by reference to age, nationality, residence or criminal conviction for a serious offence. Second, there is a significant body of electoral law which applies specifically to Northern Ireland to combat electoral fraud. (For example, special rules for registration and voting both at polling stations and by post.) These restrictions are proportionate to a legitimate aim: to ensure that both the registration and voting processes are not open to abuse and that any elections are free and fair. A recent report from the Council of Europe explored the various special procedures in Northern Ireland and concluded that they were reasonable and proportionate in pursuit of this aim.<sup>15</sup> With this in mind, the Government is confident that these measures would meet the “reasonableness” test which would be a key element of the standard set out in this proposed right. The Government therefore agrees that a right to vote freely in and be elected at genuine periodic elections held by secret ballot might be included in a Bill of Rights for Northern Ireland. It would need to be clear that such a right could be subject to reasonable restrictions.

**5.22 Recommendations 6.3 and 6.4** raise a number of related issues and are best considered together. On the first, **proportional representation** (PR) in regional and local elections is already implemented in Northern Ireland through electoral legislation, and is a central mechanism in ensuring that all sections of the community are, as far as possible, represented and play their part in the democratic process. The Government’s commitment to PR

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<sup>15</sup> [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)046-e.pdf](http://www.venice.coe.int/docs/2007/CDL-AD(2007)046-e.pdf)

elections at a regional level is already enshrined in the Belfast Agreement, which specifies that the Assembly should be elected through the single transferable vote form of proportional representation. The Government does not believe that it would be appropriate for a Bill of Rights specifically to require the use of a particular voting system, but a Bill of Rights could underpin the system already set out in the Agreement by reaffirming the principle that any electoral system in Northern Ireland should provide for both main communities to be fairly represented. The Government therefore proposes that a Bill of Rights for Northern Ireland should provide that any electoral system should provide for both main communities in Northern Ireland to be fairly represented.

5.23 **Recommendation 6.4** is that the democratic safeguards in regional in the Strand One section of the Agreement should be recognised in the Bill of Rights. The Government fully supports the objective of inclusive, proportionate and equitable participation in regional government. The Government is not, however, persuaded that a Bill of Rights should include such detailed matters as the allocation of Committee membership in proportion to party strengths in the Assembly, which is currently provided for in the Assembly's Standing Orders. It seems sensible for the Assembly to have some flexibility to regulate matters of this nature as it sees fit, in keeping with the principles set out in the Agreement and legislation. As with PR voting, therefore, the Government proposes that a Bill of Rights should give include a general principle of inclusive and equitable representation in the Assembly, which would then set the parameters within which the more detailed system would operate.

5.24 Recommendation 6.4 also covers the arrangements at local government level, which are a devolved matter. The Government understands that, as part of the review and restructuring of local government in Northern Ireland, the Department of the Environment has developed proposals to promote inclusive, proportionate and equitable participation in local government, to be taken forward in the forthcoming Local Government (Reorganisation) Bill. These reflect the safeguards outlined in Strand One of

the Agreement. The new provisions will apply to the eleven new district councils that will be established in 2011. The Government will discuss with the Executive whether there is a need to include a general principle of inclusive and equitable representation at a local government level in a Bill of Rights for Northern Ireland.

5.25 While it is arguable that encouraging the equal participation of women in political life is a priority across the UK, not just in Northern Ireland, it is the case that the parties specifically affirmed their support for this principle in the Agreement<sup>16</sup>. **Recommendation 6.5** calls for effective measures to be taken, and many have, in fact, been implemented. For example, public authorities in Northern Ireland have a duty under section 75 of the 1998 Act to pay due regard to the need to promote equality of opportunity between men and women. There are no legal barriers to the full and equal participation of women, and indeed the law allows political parties in Northern Ireland (as in the rest of the UK) to use all-women shortlists when selecting candidates for election. The public appointments process, which is based on selection on merit, is overseen by the independent Commissioner for Public Appointments, whose Code of Practice emphasises that the promotion of equality of opportunity and diversity must be inherent within the appointments process. However, while the policy objective of increasing the participation of women is widely accepted, it is not clear that it would be helpful in practice to establish it as a right in domestic law, as opposed to focusing on the practical administrative steps needed to take action forward. These are mainly a matter for the Executive, and action is co-ordinated by the Gender and Sexual Orientation Equality Unit in the Office of the First Minister and Deputy First Minister (OFMDFM), which is overseeing the cross-departmental Gender Equality Strategy, together with other steps to address women's under-representation in political and public life. (For example, the Minister of the Environment encourages initiatives taken by councils and local government representative bodies – such as the “Women in Local Councils” initiative – that aim for wider participation in local government.)

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<sup>16</sup> Agreement, “Rights, Safeguards and Equality of Opportunity”, p.16, paragraph 1.

5.26 **Recommendation 6.6** concerns appointments to public bodies. The law already requires that appointments made to a number of public bodies should be such as to secure that, as far as practicable, the membership of the body is representative of the community in Northern Ireland. Subject to some variation of detail, public bodies in this category include the Equality, Human Rights and Parades Commissions and the Policing Board. Appointments to most public bodies are now the responsibility of devolved Ministers, and therefore the Government will discuss with the Executive whether a Bill of Rights for Northern Ireland should require that the membership of public bodies should, as far as practicable, be representative of the community in Northern Ireland.

5.27 **Recommendation 6.7** appears to be more a specific policy recommendation to Government than a prescription for a fundamental right. In fact, there are already two independent electoral authorities in Northern Ireland. The Chief Electoral Officer is independent of Government and is responsible for maintaining the electoral register, administering elections and ensuring that they are conducted fairly and impartially. The Electoral Commission performs a supervisory and regulatory role and reports periodically on many aspects of the process. This Commission, with its independent supervisory role, appears to fit best the description of the authority that this Recommendation envisages. (Its duties are set out in the Political Parties, Elections and Referendums Act 2000, and it has UK wide jurisdiction.) The Government is committed to maintaining an independent electoral authority for Northern Ireland, and will ensure that the legislative framework governing this is compatible with the Bill of Rights; and it does not therefore believe that a separate right within the Bill is necessary to achieve this objective.

#### **Consultation questions**

*(D) Do you agree that a right freely to vote in and be elected at genuine*

*periodic elections held by secret ballot should be included in a Bill of Rights, subject to reasonable restrictions?*

*(E) Do you believe that the Bill of Rights should include the principle that any electoral system used in Northern Ireland should provide for both main communities to be fairly represented?*

*(F) Do you believe that the Bill of Rights should also require that the structures of the Assembly and local government should enable inclusive and equitable participation by elected representatives?*

*(G) Do you believe that there should be a requirement for the membership of public bodies to, as far as practicable, be representative of the community in Northern Ireland?*

*(H) Do you believe that any other provisions (whether or not discussed above) should be included in a Bill of Rights to help secure fundamental democratic rights in Northern Ireland?*

## **CHAPTER 6: RIGHTS RELATING TO IDENTITY, CULTURE AND LANGUAGE**

6.1 In this chapter, the Government discusses rights proposed by the NIHRC which relate to the way in which individuals identify and define themselves, and to aspects of their community identity, including their culture and their language.

### **NIHRC 10: The right to identity and culture**

**10.1 The right of the people of Northern Ireland to identify themselves and be accepted as Irish or British or both, as they may so choose, with no detriment or difference of treatment of any kind. This right would not be affected by any future change in the status of Northern Ireland.**

**10.2 The right of the people of Northern Ireland to hold British or Irish citizenship or both in accordance with the laws governing the exercise of this right, with no detriment or differential treatment of any kind. This right would not be affected by any future change in the status of Northern Ireland.**

**10.3 Public authorities must fully respect, on the basis of equality of treatment, the identity and ethos of both main communities in Northern Ireland. No one relying on this provision may do so in a manner inconsistent with the rights and freedoms of others.**

**10.5 Public authorities must encourage a spirit of tolerance and dialogue, taking effective measures to promote mutual respect, understanding and co-operation among all persons living in Northern Ireland, irrespective of those persons' race, ethnicity, language, religion or political opinion.**

**10.6 No one may be compelled in Northern Ireland to take an oath, or to take an oath in a manner, that is contrary to their religion or belief, or that requires them to express a belief that they do not hold.**

6.2 Respect for identity and ethos in Northern Ireland was a central theme in the Belfast Agreement, and was specifically referred to in the remit which the Agreement gave to the NIHRC (see Agreement text quoted at paragraph 2.4 above).

6.3 In general, the NIHRC's recommendations in this area reflect the particular circumstances of Northern Ireland, and are considered in detail below. However, in the Government's view, an exception is the NIHRC's fourth recommendation under this heading:

*“Everyone belonging to a national, ethnic, religious, linguistic or cultural minority in Northern Ireland has the right, individually and in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public. No one exercising these rights may do so in a manner inconsistent with the rights and freedoms of others.”*

6.4 It is clear from the Advice that this does not primarily refer to the two main communities in Northern Ireland but to other cultural, linguistic and ethnic minorities living here. The question of how such minorities should relate to the wider community, and the balance to be struck between acquiescence in minority religious and cultural practices (e.g. Sharia law) which may not be consistent with European law and culture, and on the other hand the positive promotion of citizenship and shared values, is very much part of the national debate started by the Green Paper on a Bill of Rights and Responsibilities (see chapter 3) and cannot be said to reflect particular circumstances in Northern Ireland. It is therefore not considered further here.

6.5 **Recommendations 10.1** and **10.2** relate to the commitments given by both governments in the Agreement to:

“recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Government and would not be affected by any future change in the status of Northern Ireland.”<sup>17</sup>

6.6 The Government recognises the considerable symbolic importance of a choice by person to identify himself or herself as British or Irish or both, in line with the commitments made in the Belfast Agreement, and believes that such a choice should be respected. In the view of the Government, such a right is central to any Bill of Rights for Northern Ireland. The Government therefore believes that any Bill of Rights for Northern Ireland should enshrine in legislation the right of the people of Northern Ireland to identify themselves and be accepted as Irish or British or both.

6.7 The NIHRC’s advice does not address the question of precisely who such a right should cover. However, Annex 2 to the Belfast Agreement defines “the people of Northern Ireland” for the purposes of that provision in Agreement as:

“all persons born in Northern Ireland had having, at the time of their birth, at least one parent who is a British citizen, an Irish citizen or is otherwise entitled to reside in Northern Ireland without any restriction on their period of residence.”

6.8 The commitment to recognise as valid an individual’s self-identification as either British or Irish, irrespective of any future change in the status of Northern Ireland, is evidently one that binds not only the UK but also

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<sup>17</sup> Belfast Agreement Article 1 (p28).

the Irish Government. While the Belfast Agreement, as an International Agreement between the two Governments, already gives effect to this commitment, any re-expression of it in domestic Westminster legislation would need to be done in consultation with the Irish Government. The Government would therefore need to discuss with the Irish Government how such a right could be formulated and made fully effective.

6.9 The NIHRC also proposes that “the people of Northern Ireland” should be able to exercise their rights to hold British or Irish citizenship or both, and to do so without any detriment or difference in treatment. In the case of an individual meeting the definition set out in paragraph 6.7, he or she is, as a matter of British law, a British national by virtue of the British Nationality Act 1981 and, as a matter of Irish law, an Irish national by virtue of the Irish Nationality and Citizenship Acts 1956 -2004, and therefore retains all the entitlements of both, whether he or she chooses to identify himself or herself as British, or Irish, or both, thus ensuring that he or she suffers no detriment as a result of any such choice.

6.10 The Government recognises the fundamental importance of the confirmation given by the two governments in the Agreement that they accept the right of the people of Northern Ireland to hold British and Irish citizenship, and agrees that such a right might be enshrined in a Bill of Rights. Since such a right would have ongoing implications for Irish nationality law, as well as British nationality law, the Government will discuss with the Irish Government whether a Bill of Rights could confirm the right of the people of Northern Ireland to hold British and Irish nationality.

6.11 Turning to **recommendation 10.3** (respect for the identity and ethos of both main communities), the general statement set out in this proposal is already fully accepted as a guiding principle by public bodies in Northern Ireland. In terms of domestic law, the protections sought by the NIHRC might be said to be already provided by the equality of opportunity provisions in the 1998 Act, in particular section 75(1) which requires that

75. (1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity –

- (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- (b) between men and women generally;
- (c) between persons with a disability and persons without; and
- (d) between persons with dependants and persons without

The coverage of this section extends to nine categories rather than the two – the “main communities” – referred to in the proposed right. The NIHRC does not point to any specific areas which are not currently protected, or address the question of how the broad concepts of “identity and ethos” could be defined so as to enable the courts to address them effectively.

6.12 However, the Government acknowledges that equality of treatment and mutual respect is an issue of fundamental importance in Northern Ireland, which features prominently in the Agreement. The Government therefore invites views on whether it would be of value to seek to consolidate into one or more clearly expressed provisions in a Bill of Rights the existing law in this area. In addition, views are sought on whether there are aspects of the identity and ethos of the main communities which are insufficiently protected by the existing equality provisions, on whether further protection is necessary, and on how such protection might be framed. If it is apparent from this consultation that there is a need for further protection, the Government would consider, in consultation with the Executive, whether a further obligation might be placed on public authorities in this area. The results of the consultation on the Equality proposals – particularly on whether there is a case for adding to the nine categories which are protected in the existing legislation (s.75) – will clearly have a bearing here.

6.13 A further duty on public authorities is proposed in **recommendation 10.5**, which would require them to encourage a spirit of tolerance and

dialogue, and to promote mutual respect. The Government agrees that tolerance, dialogue and mutual respect should be encouraged wherever possible.

6.14 A wide range of steps have been taken by Departments and public bodies in Northern Ireland to improve community relations and encourage tolerance and mutual respect across the community, under the initiative “A Shared Future” (2005) and subsequent measures.

6.15 Underlying these activities are the equality provisions of the 1998 Act, in particular section 75(2) which imposes the obligation that, in carrying out their functions, public authorities in Northern Ireland must

“have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group”.

Detailed underpinning is given to this and the other section 75 provisions by Schedule 9 of the 1998 Act, which requires public authorities to submit schemes to the Equality Commission showing how they intend to fulfil the s.75 duties. These Equality Schemes must cover the consultation and monitoring arrangements established by public bodies in relation to their functions, including the need to conduct and publish equality impact assessments. The NIHRC has published a range of guidance for public authorities, which stresses that the equality duties (including the promotion of good relations) should be mainstreamed into their daily functions, not treated as an add-on, with the overall objective that the

“equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making”.<sup>18</sup>

6.16 Northern Ireland therefore already has very comprehensive provision in this area. It might be possible to add to these existing obligations, by

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<sup>18</sup> Equality Commission for Northern Ireland, “Guide to the Statutory Duties” (February 2005), 1.4.

requiring public authorities also to have regard to the desirability of promoting a spirit of tolerance, dialogue and mutual respect between people. However, the Government is conscious that increasing the range of issues to which public authorities are required to have regard runs the risk of diluting their focus on each issue. The Government is therefore seeking views on whether an additional duty on public authorities is needed.

6.17 Finally, **recommendation 10.6** would provide protection for individuals in Northern Ireland from any compulsion to take an oath that is contrary to their religion or belief. The NIHRC Advice states that Articles 9 and 10 of the ECHR already provide protection against having to swear an oath contrary to one's belief. However, as in other areas, that right may be subject to limitations prescribed by law, and in a number of cases the European Court of Human Rights has pronounced on the legitimacy of such limitations. The NIHRC considers that in such cases the European Court of Human Rights has not exercised sufficiently "rigorous scrutiny" (*Advice, p 102*), and therefore proposes a more sweeping formulation of the right.

6.18 The Government accepts the considerable importance of such protection for the people of Northern Ireland. However, it is not so far apparent that the protection already provided by the ECHR has been insufficient. The NIHRC does not point to any examples of oaths being required in Northern Ireland contrary to an individual's religion or belief. There are in fact significant statutory safeguards in this area: section 77 of the Northern Ireland Act 1998 forbids any requirement by public authorities that persons appointed to or employed by them should have to take an oath. Where some form of oath or attestation is necessary, neutral formulations are used. For example, section 19 of the Justice (Northern Ireland) Act 2002 prescribes alternative forms of oath or affirmation for persons appointed to judicial office, which focus not on religion or belief but on the impartiality and independence of judges. The attestation required on appointment to the PSNI is entirely neutral, stressing the qualities of fairness, integrity and respect for human rights which police officers must show. While witnesses in court proceedings are justifiably required to take an oath or affirmation that they will

tell the truth, numerous religious (and secular) formulations of this are available for this purpose to ensure that no-one is required to act contrary to their religion or belief.

6.19 The Government agrees in principle that people in Northern Ireland should have protection from the requirement to swear an oath that is contrary to their religion or belief. However, views are sought from consultees on whether such protection is already sufficiently provided by the ECHR. If not, additional protection might be provided in any Bill of Rights for Northern Ireland.

#### **Consultation questions**

*(I) Do you agree that the right of the people of Northern Ireland to identify themselves as British or Irish or both should be included in a Bill of Rights?*

*(J) Do you agree that the right of the people of Northern Ireland to hold British and Irish citizenship should be included in a Bill of Rights?*

*(K) Is there a need for the existing obligations on public authorities in the equality field to be consolidated into a Bill of Rights?*

*(L) Do you believe there are areas in which the identity and ethos of the two communities is not sufficiently protected by the existing equality legislation? If so, should an additional obligation be placed on public authorities in this respect?*

*(M) Do you believe that there is a need to extend the existing obligations on public authorities, by requiring them also to have regard to the desirability of promoting a spirit of tolerance, dialogue and mutual respect between people? What might the practical effect of such additional obligations be?*

*(N) Do you believe that the ECHR offers insufficient protection from the*

*requirement to swear an oath that is contrary to an individual's religion or belief? If so, what additional protection might be needed in a Bill of Rights? How might it be framed?*

## **NIHRC 11: Language rights**

**11.3 Public authorities must, as a minimum, act compatibly with the obligations undertaken by the UK Government under the European Charter for Regional or Minority Languages in respect of the support and development of Irish and Ulster-Scots.**

### **Discussion**

6.20 The Government recognises the close connection between language and identity issues, and understands the concern of individuals to see that the language in which they were brought up, or which is used in their communities, is respected. Diversity in Northern Ireland, as elsewhere, has a social value. In the Belfast Agreement, the participants acknowledged “the importance of respect, understanding and tolerance in relation to linguistic diversity”.

6.21 The St Andrews Agreement also acknowledged the importance of language, in its provisions on human rights, equality and mutual respect (Annex B). Those provisions of the Agreement gave rise to the statutory duties imposed by Section 28D of the 1998 Act on the Northern Ireland Executive, to adopt strategies setting out how it proposes to enhance and protect the development of the Irish language; and to enhance and develop the Ulster Scots language, heritage and culture. The Government believes these duties are important, and would encourage the Executive to complete and publish these strategies. The Government reaffirmed (at the British-Irish Council on 13 November 2009) its commitment to work with the Executive to

support their development and implementation and it remains ready to play its full part, as respects governmental responsibilities that remain with it, in supporting these strategies. The Government also remains of the view, as reflected in the St Andrews Agreement, that there is a case for legislation reflecting on the experience of Wales and Ireland.

6.22 It may be convenient to set out here that, within its own area of responsibility, the Government plans to facilitate greater use of the Irish language separately from a Bill of Rights. It is willing in principle to see Irish designated as one of the languages in which applications for UK citizenship may be made, thereby conferring on it the same status as English, Welsh and Scots Gaelic, and pointing up the legitimacy of the use of Irish by a citizen of the UK. The Government also continues to work to ensure that the Irish language television channel TG4 is available on a free-to-air basis in Northern Ireland both now, and after the digital switchover in 2012.

6.23 The Government's acceptance of the Criminal Justice Review recommendation that "consideration of the use of the Irish language in the courts be taken forward in the wider context of the development of policy on the use of Irish in public life generally", demonstrated that Ministers would be ready to consider conferring greater entitlement to use Irish before the courts. At present an individual before a court who is able to speak Irish but not English would be entitled to interpretation (as would be the case with someone who spoke another language but not English), but there is no wider entitlement. The Government's willingness to provide for the use of Irish in courts was set out in the consultation paper published in March 2007 by Direct Rule Ministers. When policing and justice powers are devolved, this will be a matter for the Northern Ireland Executive.

6.24 The NIHRC has proposed three new rights under this heading, the first two of which require (in essence) that everyone belonging to a linguistic minority should have the right to be educated and receive public services through the medium of their own language. The question of how far supporting minority languages helps or hinders the integration of migrants into

society is one that is clearly relevant across the UK, and does not appear to have special significance in Northern Ireland. These proposed rights should therefore find their place in the national debate.

6.25 **Recommendation 11.3** relates to the UK's obligations under the European Charter for Regional or Minority Languages in respect of Irish and Ulster Scots. The UK has a large number of detailed obligations under the Charter in relation to Irish and Ulster Scots in Northern Ireland. The majority of these obligations fall into devolved areas and are for the Executive to meet. The Government remains committed to continuing to meet its own obligations and invites the Northern Ireland Executive, in the context of responding to this consultation, to similarly confirm its commitment to meeting its obligations under the Charter. In respect of public authorities' duties under the Charter, an Inter-Departmental Charter Implementation Group (ICIG), chaired by DCAL and comprising all Government departments that operate in Northern Ireland, has developed a wide range of guidance for public servants to help them meet their obligations. Action taken includes the establishment of quality controlled translation and voicemail services.

6.26 However, the Government recognises the importance and sensitivity of language issues, and their close relation to questions of culture and identity, and would welcome views on whether there are any aspects of language issues that should be protected by the setting out of additional rights in a Bill of Rights.

**Consultation question**

*(O) Do you believe that there are additional protections in relation to Irish or Ulster Scots that should be included in a Bill of Rights? What form might such protections take?*

## **CHAPTER 7: RIGHTS RELATING TO SECTARIANISM AND SEGREGATION**

### **NIHRC 9: Freedom from violence, exploitation and harassment**

- 9.1 Everyone has the right to be free from all forms of violence and harassment, from either public or private sources, including but not limited to:**
- ...
- d) sectarian violence or harassment**
- ...
- 9.3 Public authorities must take all appropriate measures to ensure protection of the right in Recommendation 1....**

### **Discussion**

7.1 Under this heading the NIHRC proposes a right to be free from all forms of violence and harassment, and lists in particular violence or harassment which is domestic, sexual, gender-related, sectarian or motivated by hate. It also proposes that everyone should have the right to be protected from sexual exploitation and human trafficking; and that public authorities should be under a duty to take measures to ensure protection of these rights. Of these proposals, those relating to freedom from sectarian violence or harassment have a particular resonance in the Northern Ireland context; the right to freedom from sectarian harassment was one of the key principles affirmed in the “Rights, Safeguards and Equality of Opportunity” section of the Agreement.

7.2 The Government attaches the highest priority to protecting the community from all forms of violence. In 2005 Government published ‘Tackling Violence at Home’ a 5 year Strategy for addressing domestic violence and abuse in Northern Ireland. The Strategy is accompanied by a

series of annual action plans with the 2009/10 Domestic Violence Action Plan jointly launched by NIO and DHSSPS Ministers earlier this year. The Strategy and the associated Action Plans set out a vision for the future, with aims and targets focusing on preventive measures and on the provision of better protection, justice and support services for victims and their children. Each Action Plan details proposed actions for the period which it covers; indicates which department or agency is responsible for progress; and sets target dates for implementation of each action. On sexual and gender-related offending, the relevant law was completely overhauled by the Sexual Offences (NI) Order 2008, which has introduced a new and robust framework providing the same level of protection in Northern Ireland as in the rest of the UK. In terms of more general safeguarding against violence, the Criminal Justice (NI) Order 2008 introduced a wholly new system of public protection sentences, under which the release from custody of offenders deemed dangerous by the courts is conditioned by the risk they are assessed to pose. When released, offenders serve the remainder of their sentence on licence, supervised by the Probation Board, and can be recalled to custody if they breach licence conditions. A 5-year strategy on tackling sexual violence and abuse was launched in 2008, and the police and criminal justice agencies follow best practice in relation to sexual and violent offending; a Sexual Assault Referral Centre is being developed and will be operational by 2011; and the Council of Europe Convention on Trafficking in Human Beings has been implemented in Northern Ireland, as in the rest of the UK, from 1 April 2009.

7.3 However, vital though these issues of community safety are for both Government and the public, there are no clear grounds to believe that they affect Northern Ireland in any way that significantly differs from the rest of the UK. The latest Crime Survey figures continue to show that there is a lower risk of becoming a victim of violent crime in Northern Ireland (2.2% of the population) than in England and Wales (3.3%).<sup>19</sup> Of the areas proposed in the Advice, therefore, the Government considers that only the proposed right of freedom from **sectarian violence** does clearly reflect the particular

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<sup>19</sup> Northern Ireland Office, "Experience of Crime: Findings from the 2007/08 Northern Ireland Crime Survey", February 2009, p. 10.

circumstances of Northern Ireland, given the history of extensive sectarian offending here.

7.4 Many measures have already been taken to combat sectarian crime. The Government has raised the maximum penalties across the board for the key sectarian offences (wounding; criminal damage; harassment; intimidation); and has also established a much wider range of crimes that can be motivated by sectarianism (and hatred on other grounds, including race, ethnic origin and sexual orientation).

7.5 In 2007 the Criminal Justice Inspectorate Northern Ireland published a report into *A Thematic Inspection of the Management of Hate Crime by the Criminal Justice System*. A sub-group of the Criminal Justice Board was established to address the resultant recommendations. That work continues to be progressed and the issues identified are informing the development of a revised Community Safety Strategy.

7.6 The PSNI uses every available resource to arrest those responsible for sectarian (and other hate) crimes and bring them before the courts. Each police district has a dedicated Hate Incident Minority Liaison Officer (HIMLO), to engage with and support victims and vulnerable groups; and along with the NIO and the Northern Ireland Housing Executive the PSNI operates the Hate Incident Practical Action Scheme which provides physical security measures in certain cases. The PSNI also runs advertising campaigns to encourage the reporting of sectarian and other hate crime. The Unite Against Hate campaign was launched in September 2009 to raise awareness of hate crime. It is supported by the NIO, PSNI, OFMDFM, the Equality Commission for Northern Ireland and the Community Relations Council and seeks to create a climate of zero tolerance for hate crime and discrimination.

7.7 Considerable resources are being deployed by public authorities to ensure that the people of Northern Ireland are protected from sectarian violence or harassment. But the Government acknowledges that sectarian

violence or sectarian harassment remains an issue of considerable concern for many people, including in the context of parading.

7.8 The Government is committed to tackling sectarianism, and violence or harassment stemming from sectarianism, in Northern Ireland society; it is imperative to do so if Northern Ireland is to continue moving forward. The Government believes it is right to consider whether more could be done in a Bill of Rights to address these issues.

7.9 An absolute right to freedom from sectarian violence or harassment, or a duty on public authorities to ensure such freedom cannot itself bring about the end of sectarianism. Sectarianism is deep-rooted within the history of Northern Ireland, and it can only be eradicated through careful and patient work to advance reconciliation (such as the Executive's Cohesion, Sharing and Integration programme) and to embed and broaden a stable political settlement in line with the Belfast Agreement.

7.10 However, the Government agrees that a positive duty to tackle sectarian violence and harassment would be a very valuable measure to underpin and strengthen the existing legislative provisions. The Government would be grateful for views on how such a duty might best be framed in a Bill of Rights. One possibility would be a further extension to the matters to which public authorities are required to have regard in carrying out their functions. Under s.75(2) of the Northern Ireland Act, specified public authorities are required to:

“have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.”

The Government discusses in chapter 6 of this paper whether public authorities should also be required to have regard to the desirability of promoting a spirit of tolerance, dialogue and mutual respect between people in Northern Ireland. This could be extended further, to include a requirement to have regard to the desirability of tackling sectarian violence and

harassment. However, the Government is conscious that extending the list of matters to which public authorities are required to have regard risks diluting their focus on each of the relevant matters. It is also the case that the existing duty placed on public authorities in s.75(2), and the possible extension discussed in chapter 6, both require public authorities to have regard to the desirability of promoting positive outcomes or behaviours. In relation to sectarian violence or harassment, the aim would be to prevent (or lessen the likelihood of) a negative outcome or behaviour, which might more appropriately be addressed in a different type of provision.

7.11 An alternative approach would be to place a positive duty on certain public authorities to take steps to combat sectarian violence and harassment. The Government believes that this may be the better approach. However, it would not necessarily be appropriate to place such a duty on all public authorities covered by s.75 of the Northern Ireland 1998, or indeed all those individuals or organisations who are public authorities for the purposes of the HRA. Not all those carrying out public functions will be in a position to take such steps. It might be appropriate to limit such a duty to a smaller group of public authorities, which might, for example, include those carrying out functions in relation to law and order or those, such as schools or colleges, who are in a position to help tackle sectarianism through education.

**Consultation question**

*(P) Do you agree that any Bill of Rights should include a measure aimed at combating sectarian violence or harassment? Should such a measure take the form of a duty placed on public authorities? If so, which public authorities should be included?*

**NIHRC 16: The right to accommodation**

**16.2 No one may be forced out of their home by threats or harassment or evicted without an order of a court. Public authorities must take all appropriate measures to ensure the protection of this right.**

## **Discussion**

7.12 The NIHRC proposes three new rights under this heading. The first would impose a duty on public authorities (to be achieved progressively) to provide everyone with “accommodation appropriate to their needs”; the second (above) relates to people who may be forced out of their home or evicted; while the third specifies that everyone should have the right to appropriate emergency accommodation. The NIHRC argues in its Advice that these rights are necessary (in part) to reduce segregated patterns of housing caused by intimidation, to increase social and affordable housing and to require public bodies to allocate housing without discrimination. The Government believes, however, that the provision of housing and emergency accommodation, while of great importance in Northern Ireland, is an equally significant national issue, and that the areas covered by the first and third rights would therefore not be appropriate for a Northern Ireland only Bill of Rights. (In respect of the arguments in the Advice, it should be noted that the Northern Ireland Housing Executive is bound by existing equality legislation, and has also committed itself to respond quickly and effectively to the needs of people in danger as a result of community conflict.<sup>20</sup>)

7.13 As the NIHRC suggests, the second recommended right (set out above) may have particular resonance in Northern Ireland because of the patterns of segregated housing which exist, attributable partly to sectarianism and intimidation. The Government recognises that the right freely to choose one’s place of residence was mentioned in the Belfast Agreement, and that the circumstances of Northern Ireland give added significance to the ability of individuals to choose their place of residence and remain there without

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<sup>20</sup> NIHE, “Five year review of the Equality Scheme 2001-2006,” p. 9.

harassment, subject to lawful and necessary constraints.<sup>21</sup> There are already measures in place to help achieve this – for example, the Housing Executive provides physical home security measures for those who live at or near interface areas – but the Government will consider what further protection might be provided in a Bill of Rights. Since this area is primarily the responsibility of devolved Ministers, the Government will discuss with the Executive, in the light of responses expressed during the consultation, whether a right could be formulated setting out the role which public authorities should properly play in supporting the individual's freedom to choose and remain in his or her place of residence without fear of violence.

7.14 It should be noted that if an obligation were placed on certain public authorities to take steps to combat sectarian violence and harassment, that would presumably include steps to combat sectarian violence and harassment aimed at forcing an individual from his or her home.

**Consultation question**

*(Q) Do you believe that there is a need for a Bill of Rights to contain additional protections to prevent individuals from being forced out of their home by intimidation or harassment, in addition to any general measures aimed at combating sectarian violence or harassment? If so, what role might public authorities play?*

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<sup>21</sup> Agreement, “Rights, Safeguards and Equality of Opportunity”, p. 16.

## **CHAPTER 8: RIGHTS RELATING TO VICTIMS AND THE LEGACY OF THE CONFLICT**

8.1 In this chapter, the Government discusses the proposals made by the NIHRC which relate to the legacy of the conflict in Northern Ireland, including the investigation of deaths during the Troubles, the rights and needs of victims and survivors of the conflict, and the position of children in relation to intelligence-gathering. Recommendations relating to the criminal justice system are covered in the next chapter.

### **NIHRC 1: The right to life**

**1.1 Legislation must be enacted to ensure that all violations of the right to life relating to the conflict in NI are effectively investigated. Any mechanisms established must be fully in compliance with international human rights law.**

#### **Discussion**

8.2 The NIHRC's proposed right is that legislation be enacted to ensure effective investigation of conflict-related deaths, compliant with international human rights law. This would be supplementary to Article 2 of the ECHR, the principal provision of which is that:

“Everyone’s right to life shall be protected by law”.

8.3 The Government recognises the pain and distress of the families of those who were killed during the conflict. For many families, that pain is increased because they still have unanswered questions about the deaths of their loved ones. It was to help to answer some of these questions that the Government, working closely with the PSNI, established the Historical Enquiries Team (HET) in 2005 to re-examine all the deaths attributable to the security situation between 1968 and 1998. This is a considerable challenge, to which significant resources have been devoted (£38.3 million, including

extra allocations for the Police Ombudsman). The HET is working both to bring a measure of closure to as many of the families involved as possible, and to ensure that all remaining investigative and evidential opportunities are subject to detailed and professional examination. So far as possible given the passage of time, all the HET's investigations are thorough, professional and independent. The HET also involve relatives, if they wish to be involved.

8.4 There are however some families who do not wish to be involved with the HET for various reasons but particularly because the HET is located within the PSNI. The Consultative Group on the Past, which reported in January 2009, recommended the creation of an independent Legacy Commission which, among other functions, would take over from the HET responsibility for dealing with historic cases. Public consultation on the Group's Report ended in October 2009, and the Government is currently considering the consultation responses. Following the analysis of the views received, the Government will respond to the Group's proposals, including on the future of the HET, in consultation with the Irish Government and the devolved administration.

8.5 As it stands, the Government does not believe that the NIHRC's proposed right is in an appropriate form. The proposed right could have far-reaching and unintended consequences. The NIHRC indicates that the right is intended to ensure that Article 2 (through domestic legislation) applies to all deaths relating to the conflict, even when the deaths occurred before the HRA came into effect in October 2000. But the HRA was never intended to apply retrospectively; it marked a point in time, from which the ECHR became enshrined in domestic law. If the change proposed by the NIHRC were made it would create two tiers of rights: Article 2 would apply retrospectively for deaths relating to the conflict, but not to other historic deaths in Northern Ireland, or indeed elsewhere else in the UK. It would be difficult to maintain that such a distinction was valid, and it might also be questioned why Article 2 should have retrospective effect but the rest of the ECHR should not. This could open up new grounds for legal challenge on issues going back many decades. The HRA was a profoundly important piece of legislation, but for

obvious practical reasons it was only designed to look forward and was never intended to apply retrospectively.

8.6 However, the Government recognises the strong wish of some of the families of those killed during the Troubles that the process of re-examination begun by the HET should be able to run its course, in some form, whatever decisions are taken about how to deal with the past more generally. The Government also recognises the important role that this process of re-examination has played so far. The Government is willing to consider, in the light of the consultation responses, whether a provision which provided some guarantees to families about the ongoing process of re-examination of deaths attributable to the conflict could be appropriately codified for inclusion in a Bill of Rights.

#### **Consultation question**

*(R) Should a provision about the ongoing process of re-examination of deaths related to the conflict be included in a Bill of Rights? If so, how should this be expressed?*

#### **NIHRC 12: Rights of victims**

**12.3 Legislation must be enacted to recognise all the victims of the Northern Ireland conflict and to ensure that their rights are protected. These rights include rights to redress and to appropriate material, medical, psychological and social assistance.**

#### **Discussion**

8.7 The NIHRC makes three recommendations in this area; the first two would give every victim of crime the rights to appropriate material, medical,

psychological and social assistance, and to be informed about progress in the investigation of their case and relevant legal proceedings. The Government believes that victims of crime should be at the heart of the criminal justice system – helping to give them confidence to report crimes, to give them and their families the support they need, to keep them fully informed about the progress of their cases, and to help convict the guilty. However, the needs of victims are recognised, and policies to meet them are being pursued, not only in Northern Ireland but across the UK; and this is not an area in which it could be justified to give special rights solely to victims in Northern Ireland. The Government therefore believes that only the third right (set out above), relating to victims of the conflict, should be considered for inclusion in a Bill of Rights for Northern Ireland.

8.8 People have suffered in many terrible ways as a consequence of the Troubles in Northern Ireland. The Government recognises the importance of meeting the needs of victims and survivors of the conflict, and agreed that measures should be considered for inclusion in a Bill of Rights to do so. Such victims have already been recognised in legislation through the Victims and Survivors Order 2006. In addition, the Commission for Victims and Survivors was created in 2008, and the Commission established a new Victims and Survivors Forum, which met for the first time in September 2009. The Forum is considering a number of issues and OFMDFM is also consulting on a new Victims and Survivors Service, which will become the focus for all funding in this sector. The activity which is under way, including the issue of how best to assess the needs of victims and survivors is clearly relevant to the formulation of any rights relating to the victims of the conflict. The Government proposes to take into account continuing developments in this field as part of the consultation, and would also welcome views about the NIHRC's proposed right in this area. Given that responsibility for victims issues has been devolved, any rights that relate to victims of the conflict would need to be developed in close consultation with the devolved administration.

8.9 The Government will therefore discuss with the Executive whether provision might be made in a Bill of Rights to ensure the needs of victims and

survivors of the conflict are addressed. Any such provision would need to be informed by the work currently being undertaken by the Commissioners for Victims and Survivors on the needs of victims.

**Consultation question**

(S) *Should provision be made in a Bill of Rights relating to victims of the conflict? How should such a provision relate to the work that is currently under way on the needs of victims?*

**NIHRC 20: Children's rights**

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

8.10 The NIHRC proposes eight supplementary rights in respect of children. The first seven (listed in Appendix 3) cover important broad areas, including: the legal definition of a child; a requirement that in adoption the best interests of the child should be the paramount consideration; a duty on public authorities to enable children to access safe and appropriate play facilities; and another duty to protect every child from abuse. Children and young people make up almost a quarter of the population in Northern Ireland and the Government believes that it is important that provisions in a Bill of Rights must apply equally to children and young people. However, the Government does not consider that the first seven specific proposals made by the NIHRC in this area meet the criterion set out in the Agreement that the provisions in a Bill of Rights should “reflect the particular circumstances of Northern Ireland...”. While the protection and welfare of children are of the highest importance in

Northern Ireland, they are of equal importance across the rest of the UK. The NIHRC argues that its proposals are justified because many children were adversely affected by the direct and indirect effects of the conflict in Northern Ireland. The Government believes that the special needs arising from the conflict would be encompassed by the earlier recommendation that “victims of the Northern Ireland conflict” should have rights to “redress and to appropriate material, medical, psychological and social assistance” (see paragraphs 8.8 to 8.9). Housing (another issue mentioned) is also separately covered in the proposed right to accommodation (paragraphs 7.12 to 7.14).

8.11 The Government therefore believes that seven of the rights should be considered further in the national debate rather than in the context of a Bill of Rights for Northern Ireland. The eighth proposal (above), while also having UK-wide application, has a particular resonance in Northern Ireland because of potential concern about the use of children as sources of intelligence. The current position is that the Regulation of Investigatory Powers Act 2000 (RIPA) does not prohibit the use by public authorities of children as covert human intelligence sources. Appropriate safeguards for their use and conduct are contained within the relevant Code of Practice and the Regulation of Investigatory Powers (Juveniles) Order 2000. Furthermore, the Intelligence Services Commissioner provides independent oversight of these powers.

8.12 The Code of Practice and Order establish special safeguards for the use of sources under the age of **18** years:

- assessments must be carried out relating to the risk of physical injury and psychological distress to the source; and
- the authorising officer must consider the risk justified and properly understood by the source and, if the source is reporting on a parent or guardian, that the authorisation is justified.
- in addition, for sources under the age of **16** years:
- no source may be used to give information against his or her parent or guardian;

- an appropriate adult must be present at all meetings between the source and the investigating authority; and
- all such authorisations last for one month, instead of the usual 12 months.

8.13 The constant challenge in the protection of human rights is to strike a fair balance between the need to safeguard the community at large and the demand to protect individual rights. The Government recognises that this is a difficult and sensitive area, but it believes that the existing legislation, which has been carefully considered and debated by Parliament, strikes the right balance. It does not therefore propose to include in a Northern Ireland Bill of Rights the NIHRC's recommendation 20.8.

## **CHAPTER 9: RIGHTS RELATING TO CRIMINAL JUSTICE**

9.1 In this chapter, the Government discusses some of the proposals made by the NIHRC in relation to the criminal justice system. Although some issues relating to criminal justice would more appropriately be considered as part of the wider UK-wide debate on a Bill of Rights and Responsibilities, the Government recognises that there are also issues – around the treatment of suspects or prisoners, trial by jury and the security of judges and lawyers, for example – which have a particular resonance in Northern Ireland due to the history of the conflict.

### **NIHRC 2: The right to liberty and security**

**2.1 Everyone who is arrested or detained has the right to consult promptly and privately with a legal representative and of prompt access where appropriate to a medical practitioner.**

**2.2 Everyone who is arrested or detained has the right to be visited by a family member under appropriate supervision.**

**2.3 Everyone who is questioned under arrest has the right to have a legal representative present during the questioning and to have it aurally and visually recorded.**

**2.4 Public authorities must take all appropriate measures to reintegrate into society those in detention or alternative care by providing support, prior to and after discharge, towards independent living.**

### **Discussion**

9.2 Article 5 of the ECHR, as reflected by the HRA, provides that everyone has the right to liberty and security of person, subject to a number of exceptions where the detention has a proper legal basis and is accompanied by appropriate safeguards. The NIHRC proposes nine supplementary rights in this area, which focus principally on introducing additional protections for suspects in detention.

9.3 Article 5 – together with other provisions of the ECHR – sets out key parameters for the criminal justice system. The purpose of criminal justice is to seek to prevent crime and provide a framework in which laws are enforced and criminals are punished so that citizens may freely exercise *their* human rights to life, liberty and personal security. But the criminal justice system inevitably interferes with people’s lives and liberty, and such interference needs to be prescribed and regulated by law to ensure that the State, in seeking to control crime, does not ill-treat individuals.

9.4 The challenge of striking a fair balance between the rights of victims and members of society as a whole, and the rights of those suspected or convicted of crime, has been the subject of close and continuing debate and scrutiny in Parliament, the courts and the media, in the UK as a whole as well as within Northern Ireland. The relevant legislation and associated Codes in this area are closely aligned across the whole of the UK. It is therefore important to consider whether the NIHRC’s proposed supplementary rights do indeed reflect the particular circumstances of Northern Ireland, as the Agreement requires, or could be proposed with equal relevance for the UK as a whole. In the Government’s view, five of the proposed nine rights – one of which deals with a part of the ECHR not included in the HRA, while the other four relate to the treatment of children within the criminal justice system – do not have unique significance in Northern Ireland, but are of similar importance across the UK and should therefore find their place in the national debate.

9.5 The remaining four proposals (listed above) made by the NIHRC to supplement Article 5 are discussed in more detail in this chapter. While Northern Ireland is rapidly becoming a normal, peaceful and secure society, its recent history of terrorism and sectarian violence, and the response of the criminal justice system to those challenges (in particular the treatment of suspects in detention, around which human rights concerns have been raised in the past) justify the consideration as potential rights of the four proposals above.

9.6 **Recommendation 2.1** relates to the right of someone who is arrested or detained to consult a legal representative and a medical practitioner where appropriate. The current position in this area is that the Police and Criminal Evidence Order 1989 (PACE), the Terrorism Act 2000 (TACT), and associated Codes of Practice make provision for access to legal advice for persons arrested and detained in a police station. Article 59 of PACE and Schedule 8 of TACT state that a person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a solicitor privately at any time. Legal advice given in the police station is free of charge, regardless of whether the arrested person chooses to have his or her own solicitor or one called by the police.

9.7 There is no power to delay access to legal advice unless the suspect is being held in police detention in connection with an indictable (i.e. more serious) offence. In such cases, access to legal advice may be delayed if this is authorised by a police officer, of at least the rank of Superintendent, who has reasonable grounds for believing that the exercise of the right of access to legal advice will:

- (a) lead to interference with or harm evidence connected with an indictable offence or interference with or physical injury to other persons; or
- (b) lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) hinder the recovery of any property obtained as a result of such an offence.

9.8 There are additional grounds for delaying access to legal advice for terrorism suspects where there are reasonable grounds for believing that it would lead to interference with the gathering of information about the commission, preparation or instigation of acts of terrorism. If the grounds for delay cease to apply, the arrested person must, as soon as practicable, be asked if he or she wishes to access legal advice. The maximum period of

delay under PACE is 36 hours, while for those held under TACT such delay can continue for up to 48 hours.

9.9 The NIHRC notes (*Advice, pp 64-5*) that a violation of the Convention was found in 1996 when adverse inferences were drawn from the silence of a detainee who had not had access to legal advice. However, it is important to recognise that the law has subsequently moved on. Articles 3, 5 and 6 of the Criminal Evidence (Northern Ireland) Order 1988 (as amended by Article 36 of the Criminal Evidence (Northern Ireland) Order 1999), describe the conditions under which adverse inferences may be drawn from a person's failure or refusal to say anything about their involvement in the offence when interviewed, after being charged or informed that they may be prosecuted. No adverse inference can be drawn from silence when a suspect is questioned at a police station or other authorised place of detention if he or she has not been allowed access to legal advice.

9.10 In relation to medical treatment, the PACE Code of Practice C (Detention, Treatment and Questioning of Persons by Police) requires that the custody officer must make sure a detained person receives appropriate clinical attention as soon as reasonably practicable if the person appears to be suffering from physical illness; is injured; appears to be suffering from a mental disorder; or appears to need clinical attention. This applies even if the detainee makes no request for medical attention.

9.11 The Government recognises that any constraints on communication between a criminal suspect and his or her legal adviser or doctor must be fully justified, and that these areas have caused controversy in Northern Ireland in the past. In fact, very close attention has been paid in Parliament, in international and domestic jurisprudence and by the Independent Reviewer of Terrorism legislation, to striking a fair balance in this area, and the progressive refinement of the relevant statutory Codes has addressed legitimate concerns. The Codes can be developed further where that is justified. Lord Carlile, the Independent Reviewer, has said that the Terrorism Act Codes are "of good quality ... and a sound protection for the liberty of the

subject and investigators alike”.<sup>22</sup> The Government believes that the present arrangements – which permit prompt access to legal advice in all cases save those where, in the judgement of a senior police officer, carefully defined criteria apply; and to medical attention, where needed, as soon as possible – do appropriately weigh the interests of the suspect and the safety of the wider community.

9.12 The Government does not therefore believe that the existing arrangements on access to legal advice and medical attention should be changed. The existing arrangements strike a careful balance between the interests of the suspect and the safety of the wider community, informed by the fundamental protections already offered by the ECHR. The Government is concerned that the creation of a new right in this area as proposed by the NIHRC would lead to attempts, through litigation, to revisit this careful balance. However, the Government recognises that there have, in the past, been substantial concerns about aspects of the criminal justice system including the treatment of suspects, stemming from the history of the conflict in Northern Ireland. Many legislative safeguards have already been put in place to meet these concerns, but the Government would welcome views on whether there is any further specific provision that might be made in a Bill of Rights on this issue.

9.13 **Recommendation 2.2** covers visits from family members to those arrested or detained. It is already the case the persons under arrest are entitled, if they so request, to have one friend or relative or other person known to them or who is likely to take an interest in their welfare to be told at public expense as soon as practicable of their whereabouts. Terrorism suspects have similar rights. Delay in notification of an arrest is only permissible in respect of an indictable offence and only if authorised by a police officer of the rank of Inspector or above. An officer may only authorise delay if he has reasonable grounds for believing that telling someone of the

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<sup>22</sup> “Report on the Operation in 2003 of Part VII of the Terrorism Act 2000”, Lord Carlile of Berriew QC.

arrest will lead to one or more of the adverse consequences set out above (para. 9.7, (a) – (c)).

9.14 In respect of visits to those under arrest, the Codes currently permit visits where possible, subject to the discretion of the custody officer, the availability of staff to supervise any visit and the need to minimise hindrance to the investigation. Visitors may include not only family members and relatives but also official visitors such as ministers of religion, MPs, Independent Custody Visitors and consular officers visiting detainees who are nationals of their country.

9.15 In respect of prisons, prisoners retain the right to family life (Article 8 of the ECHR) when they are in prison, although this is necessarily curtailed by the practicalities of imprisonment. The Northern Ireland Prison Service (NIPS) recognizes its positive obligation to strike a balance between an individual's rights and the needs of society as a whole, and the rules and provisions put in place to regulate visits are proportionate and necessary, in compliance with the ECHR. Prisoners may be visited by family, friends and other persons, and have a legal right to one visit in a four week period. The Governor may defer this visit if the prisoner is under cellular confinement (although this is seldom done) but never cancel it altogether. However, NIPS recognises the importance to the prisoner of maintaining contact with the outside world so normal practice is for the prisoner to receive four visits a month. Prisoners also get the opportunity to earn a fifth visit through the Progressive Regimes and Earned Privileges Scheme. Inmates who are parents can avail of child centred visits (where appropriate) and family fun days that are designed to enhance interaction with their families; and the NIPS Family Strategy recognises the value of maintaining family links. NIPS also encourages family contact by providing support through the Assisted Prison Visit Scheme, which promotes family life by helping families on state benefits meet the cost of their journeys to and from prison.

9.16 As regards children, special attention is paid in the Juvenile Justice Centre (JJC) to the maintenance of the relationship between a child in

custody and his or her family. In designing the new JJC, the provision of appropriate accommodation to facilitate overnight and weekend visits by families travelling from some of the more distant parts of the country was a key requirement. This facility, and the practices and procedures of the JJC, enable children to maintain positive interaction with their families while in custody, and thus help their transition back into the community. At the same time, restrictions on visits can on occasion be imposed where the Director feels this to be necessary in the best interests of the child.

9.17 The Government believes that this is an area in which it is important for the police and other agencies to retain some operational flexibility within an already carefully regulated environment. Against the background of the right to a private and family life already provided in the HRA (Article 8 of the ECHR), the Government is not convinced that the inclusion in a Bill of Rights for Northern Ireland of a specific right to family visits for suspects and prisoners is necessary or proportionate.

9.18 The NIHRC proposes in **recommendation 2.3** that everyone who is questioned under arrest should have the right to have a legal representative present during questioning, and to have the questioning aurally and visually recorded. The current rights of arrested persons to consult a legal representative are set out at paragraphs 9.6 to 9.10 above. Where the attendance of a solicitor has been requested, the arrested person may not be interviewed or continue to be interviewed until the solicitor has arrived and provided legal advice – unless:

- a police officer of superintendent rank or above has reasonable grounds for believing that the consequent delay in obtaining the attendance of a solicitor might:
  - (a) lead to interference with, or harm to, evidence connected with an offence;
  - (b) lead to interference with, or physical harm to, other people;
  - (c) lead to serious loss of, or damage to, property;

- (d) lead to alerting other people suspected of having committed an offence but not yet arrested for it;
  - (e) hinder the recovery of property obtained in consequence of the commission of an offence; or
- when a solicitor has been contacted and has agreed to attend, awaiting his or her arrival would cause unreasonable delay to the process of investigation; or
  - the solicitor nominated by the suspect cannot be contacted or has declined to attend; or
  - the detainee changes his or her mind about wanting legal advice.

9.19 All interviews with persons arrested under PACE in respect of an indictable offence are required to be audio recorded – and it is normal practice for **all** interviews to be audio recorded, even for non-indictable offences. While there is no requirement for visual recording of PACE arrests, the police do at their discretion visually record a number of interviews – for example, in respect of serious offences; where an appropriate adult is involved; and where the arrested person or their legal representative requests it. All interviews following arrests under the Terrorism Act 2000 are recorded both visually and with sound.

9.20 It is therefore the case that the right proposed by the NIHRC in this area is already very largely met by existing statutory and policy schemes. In the rare cases where legal consultation is not made available, this is on carefully delineated grounds where the rights of the individual detainee have to be balanced against the interests of justice and the rights of society as a whole to be protected from crime. As with recommendation 2.1, the Government believes that the right balance is struck by the existing provision in this area.

9.21 In **recommendation 2.4**, the NIHRC proposes that public authorities should take all appropriate measures to reintegrate into society those in

detention or alternative care by providing support, prior to and after discharge, towards independent living. The Government believes that there is a natural alignment between reducing crime (thus helping to safeguard everyone's human rights) and reducing re-offending. The resettlement and support of released prisoners are important elements in reducing re-offending, through an integrated offender management approach where interventions are matched to identified risks and needs. Accordingly, since 2005 the NIPS and Probation Board (PBNI) have teamed up with a wide range of statutory and voluntary partners to implement a comprehensive action plan designed to combat crime among released prisoners and boost community safety. This is built on seven pathways to reduce re-offending, which make it easier to focus on the particular needs of the offender. The seven pathways are:

- *Accommodation* – providing access to suitable and settled accommodation for offenders.
- *Education, training and employment* – ensuring that offenders have the skills, education and training necessary to help them to settle into sustainable employment.
- *Health, mental and physical* – securing effective access to primary care and other health services for offenders in custody and the community.
- *Drugs and alcohol* – encouraging offenders into treatment, and providing support and through care to help them build productive lives.
- *Finance, benefit and debt* – providing access to financial advice and helping offenders acquire the skills to manage their own finances.
- *Children and families of offenders* – working to ensure appropriate information and support.
- *Attitudes, thinking and behaviour* – programmes and support to address specific offending behaviour problems or motivation.

9.22 An extensive range of initiatives and practical measures have been developed under each of these headings, and the pathways are being developed further to reflect the greatly enhanced public protection arrangements which have come into effect as a result of the Criminal Justice

Order 2008. (These include a new sentencing system for dangerous sexual and violent offenders; enhanced arrangements for prisoners' release on licence, including requirements for curfews and electronic monitoring; and integrated risk-based offender management.)

9.23 In respect of children, reintegration into the community is one of the two fundamental aims of the JJC, and from the beginning of a child's period of detention is the basis of planning for the child's future, in preparation for his or her release. This is done in consultation with the child's parent/guardian, statutory or voluntary agencies as appropriate, and in particular those responsible for the period of supervision under a JJC Order.

9.24 The substantive areas identified in the right proposed by the NIHRC are therefore already being addressed through significant policy and operational measures. Against that background, the Government is not persuaded that a general obligation on public authorities in the terms proposed by the NIHRC would be either appropriate or justified, since it focuses on the support to be provided for offenders without any reference to the wider societal objectives of reducing re-offending and protecting the community from crime. If further provision were made in this area, it would be important for it to recognise that the scope for action has to be constrained both by resource availability and by external factors, such as employer attitudes to providing work opportunities for offenders. Moreover, the Government does not believe it would be appropriate to place such an obligation on **all** public authorities, since many public authorities will have no involvement with the reintegration of offenders into society.

**Consultation Question**

*(T) The Government recognises that there have, in the past, been substantial concerns about aspects of the criminal justice system including the treatment of suspects, stemming from the history of the conflict in Northern Ireland. Many legislative safeguards have already been put in place to meet*

*these concerns, but the Government would welcome views on whether there is any further specific provision that might be made in a Bill of Rights on this issue.*

### **NIHRC 3: The right to a fair trial and no punishment without law**

**3.1 Everyone has the right to trial by jury for serious offences and the right to waive it.**

**3.4 Every witness has the right, prior to and after giving evidence, to protection and support as is appropriate to their needs as witnesses.**

**3.5 Every juror has the right to such protection and support as to allow them to fulfil their role properly.**

**3.6 Every member of the judiciary and legal profession has the right to such protection as to allow them to perform their duties properly.**

### **Discussion**

9.25 Under this heading the NIHRC has proposed a number of additional rights to supplement the effects of Article 6 of the ECHR, which sets out the right to a fair trial. This is one of the most important rights provided by the criminal justice system, not only in Northern Ireland but throughout the UK. As such, issues arising from Article 6 have featured in the national debate about rights and responsibilities and are covered in the Green Paper published by the Ministry of Justice (see chapter 3).

9.26 The Government has therefore considered whether the NIHRC's proposals in this area reflect the particular circumstances of Northern Ireland, as the Agreement requires, or are equally relevant for the UK as a whole. In practice, Northern Ireland had special arrangements for trial without jury in serious cases throughout the conflict, (the "Diplock Courts") and there were threats and attacks against the judiciary, legal professionals and witnesses. Against that background, the four (out of six) proposals listed above do, in the Government's view, have particular relevance to Northern Ireland. However

the remaining two proposed rights – on evidence procured through torture and court procedures for children and vulnerable adults – appear to be of equal significance throughout the UK and are not considered further in this section.

9.27 Recommendation 3.1 covers the right to trial by jury. Jury trial in the UK derives ultimately from its inclusion in **Magna Carta** (1215), and there is therefore an understandably deep attachment to it as a fundamental constitutional principle. It is important to bear in mind, however, that Article 6 prescribes the right to a **fair** trial, not to a jury trial. Over 90% of criminal cases in Northern Ireland, for less serious offences, are heard by District Judges without juries. As noted above, during the conflict in Northern Ireland, because of the risk of perverse decisions by juries as a result of intimidation or a partisan approach, numerous trials for serious offences connected with terrorism and the security situation were heard by a judge sitting without a jury. While trial by jury is clearly the most desirable system for serious offences, trial without a jury can fully meet the accepted norms of a fair trial, in both domestic and international law

9.28 At the present time, while jury trial is the normal mode of procedure in serious criminal cases, trial without a jury for serious offences is available under the Criminal Justice Act 2003 (“the 2003 Act”) in England, Wales and Northern Ireland where there is a clear and present danger of jury-tampering. The Domestic Violence, Crime and Victims Act 2004 (“the 2004 Act”) also enables the prosecution to apply to the court for some charges to be tried without a jury where sample charges in a case have previously been tried before a jury and a trial for all charges would be impracticable because of the volume of charges. In addition, there are Northern Ireland-specific non-jury trial provisions in the Justice and Security (Northern Ireland) Act 2007 (“the 2007 Act”). The right proposed by the NIHRC could unpick these provisions, conferring a much wider right to jury trial on all defendants charged with serious criminal offences.

9.29 The 2007 Act provisions are designed to address paramilitary and community-based pressures on jurors in Northern Ireland, which are

considered to continue to pose risks to a fair trial. The system is risk-based. The Director of Public Prosecutions (DPP) can only certify a case for non-jury trial if satisfied that there might be a risk to the administration of justice in view of those factors. This is designed to ensure trials are only heard without a jury where absolutely necessary. As part of the decision-making process, the DPP considers whether other measures would be sufficient to enable the trial to proceed with a jury. In practice, the need to certify cases for non-jury trial appears to be decreasing. Under the previous (“Diplock”) system, some 60 non-jury cases were dealt with each year by the Crown Court. During the first full year of operation of the 2007 Act arrangements the DPP issued 29 certificates for non-jury trial, relating to 28 cases. During the first ten months of the second year, only a dozen certificates were issued.

9.30 Against this background, the Government does not believe that establishing the much wider right to jury trial proposed by the NIHRC would be either justified or responsible. While Northern Ireland is rapidly becoming a peaceful and normal society, it remains the case that sectarian attitudes, and paramilitary organisations, have by no means disappeared. In this situation an unqualified right to jury trial would run the risks – in more complex and serious cases – of juror intimidation, the collapse of trials, a decrease in public confidence, perverse acquittals and a potential breach of Article 6 of the ECHR (eg if in particular cases the system was not able to deliver a fair trial).

9.31 Northern Ireland is not alone in confronting these issues. As well as the 2003 and 2004 Acts referred to above which also cover England and Wales, the Special Criminal Court in Ireland (which sits with three judges) has allowed for trial without a jury of certain terrorist suspects for a long period of time. The Irish Government recently announced that the Special Criminal Court’s remit would be expanded to include organised crime cases.

9.32 In the Government’s view, the 2007 Act arrangements are an effective, considered and proportionate response to the risks which undoubtedly exist in trials relating to terrorism or serious sectarianism. They are **not**, however, a

permanent feature, since the provisions are time-limited and must be renewed by Parliament every two years. The next renewal is due by the end of July 2011, and the Government has already committed to a full public consultation before then on the continuance of the provisions. This will provide a substantial and detailed opportunity to review the need for these arrangements. The Government also believes that the provisions for non-jury trial in the 2003 and 2004 Acts, while rarely used in Northern Ireland, remain necessary and justified in exceptional cases.

9.33 **Recommendations 3.4, 3.5 and 3.6** cover important related elements of the fair trial process, have a number of common features and are therefore considered together. The Government is committed to maintaining in Northern Ireland (as in the rest of the UK) a system for the effective, independent and impartial administration of justice, as required by Article 6. Witnesses, jurors, judges and lawyers all play a fundamental role in this area, and a wide range of services are already provided to support and assist them.

9.34 **Witnesses** (and **victims**, who are frequently witnesses too) have a key role in reporting crime, cooperating with the subsequent investigation, and giving effective evidence in court. It is a criminal offence to intimidate, threaten or harm a witness or potential witness. To meet witnesses' needs for care and support, the Northern Ireland Criminal Justice Board (CJB) established a multi-agency sub-group, the Victim and Witness Task Force (VWTF), to develop a cross-cutting victims and witness strategy. This document – “Bridging the Gap” – was published in September 2007, and has five strategic objectives:

- improving access to information;
- keeping victims and witnesses informed;
- providing a quality service;
- supporting individual needs; and
- listening to victims and witnesses.

9.35 Underpinning the strategy is a series of values to which all the partners involved in supporting and delivering the strategy have subscribed. All actions taken will be:

- **People centred:** victims and witnesses will be afforded dignity and respect, and treated sensitively and fairly, with recognition given to their individual circumstances;
- **Equitable:** victims and witnesses will have equal access to, participation in and benefit from, the services delivered;
- **Focused:** service delivery will be focused on achieving specific targeted results using resources to the best effect;
- **Integrated:** services will be delivered in a coordinated, consistent and effective manner using partnership arrangements with other organisations; and
- **Professional:** the highest standards of professionalism will be maintained in dealings with victims and witnesses, and with each other.

9.36 Within the framework of “Bridging the Gap”, numerous measures have been implemented to assist victims and witnesses – including, for example, the **extension of the** Witness Service into all Crown, magistrates’, youth and county courts. The Witness Service, which is run by Victim Support, helps reduce the fear many witnesses experience in coming to court by providing visits to courtrooms in advance of a trial; giving information on what will happen in court, where people sit and how they will be dressed; and accompanying the witness in a safe and separate waiting area until they are called to give evidence. A similar service is progressively being provided by the NSPCC to young witnesses. Forthcoming initiatives include the finalisation and publication of a Code of Practice, which will establish standards for interacting with victims and witnesses and will explain how a person should expect to be treated if they become a victim or witness of crime.

9.37 In addition, there is statutory provision for special measures during a trial to help vulnerable or intimidated witnesses. These can include (if the judge agrees):

- **screening** so that the defendant cannot see the witness, and vice versa;
- **giving evidence by live link** from outside the courtroom;
- **removal of wigs and gowns** by judge and barristers, to make Crown Court proceedings appear less formal;
- **evidence given in private** – the judge may order that members of the public are not allowed into the courtroom when the witness is giving evidence;
- **aids to communication** – the witness may be able to give evidence through a communicator or interpreter, or through other aids such as a symbol book or alphabet board;
- **video recorded evidence in chief** – the main evidence (initial police statement) is videotaped. The taped evidence will then be played in court so that it is not necessary to give evidence in person. In these cases, a live link or screen can be used for cross-examination.

9.38 Separately, the PSNI maintain and conduct a witness protection programme under the Serious Organised Crime and Police Act 2005, which provides for the protection of witnesses and other persons. Its main objective is the support of witnesses and other vulnerable persons involved in the judicial process whose circumstances are such that their personal safety is subject to specific serious risk of intimidation or violence. (The PSNI also have a wider policy on dealing with victims and witnesses, which includes the need to protect vulnerable victims and witnesses.) In addition, the Northern Ireland Office Limited Home Protection Scheme (LHPS) automatically admits Crown Witnesses assessed by the Security Service to be at a substantial or severe level of terrorist threat.

9.39 Turning to **jurors**, a wide range of facilities, security measures and processes are in place to safeguard jurors and enable them properly to fulfil their role (subject to judicial decisions on a case-by-case basis). For example, on arrival for jury service, each unsworn juror is directed by court security officers to a separate assembly or waiting area or to the courtroom where court orderlies will be in attendance. Where feasible, a separate entrance and exit is used for jurors. The names and addresses of jurors are not supplied to prosecution or defence legal representatives. They are balloted for service in the courtroom by their juror number. Each sworn jury is assigned two jury keepers, who accompany members who may need to leave the courthouse during a break. Juries can immediately raise any concerns they have about security or alleged intimidation. When not in court, jurors wait or conduct their deliberations in a private and secure jury room. Leaflets advising of procedures to raise concerns or report alleged intimidation are available in every jury room. The judge may discharge a juror or jury if an allegation of alleged tampering or intimidation is made, and any such instances may be referred to the PSNI for investigation. It is a criminal offence to threaten, harm or intimidate a juror. The judge may direct that counselling is offered to jurors who have been involved in a particularly emotive trial.

9.40 To reinforce these measures, the PSNI are currently developing an enhanced juror protection policy. This will cover a range of security and protection measures that may be provided to jurors should the circumstances of a particular case require them. The range of measures could include provision of transport to and from court, police protection at home or at other accommodation for the duration of the trial. The need for any such measures (which would of course incur significant additional costs) would be assessed on a case by case basis. It is relevant in this context that experience shows that a high level of police protection can be counter-productive, entailing a degree of interference with the private lives of jurors which may appear disproportionate and consequently discourage individuals from acting as jurors.

9.41 In addition, in Northern Ireland as in the rest of the UK, jurors who incur financial loss through undertaking jury service can be recompensed at specified rates, under Article 28 of the Juries (Northern Ireland) Order 1996.

9.42 In respect of the **judiciary**, the Government recognises the obligation to provide such protection as is required to enable judges properly to perform their duties. This obligation is already implemented through a range of protective security measures. The Northern Ireland Court Service also has a wide range of security measures in place at each of its court buildings, including CCTV and panic alarms. There is also a rolling programme of security reviews at all court venues to ensure that security measures continue to be robust and sustainable. (Members of the legal professions also benefit from these measures.) The protection available for Northern Ireland judges is regularly reviewed to ensure that appropriate security measures, taking into account the level of threat and risk relevant to the prevailing security situation in Northern Ireland, continue to be provided.

9.43 The Government fully recognises the fundamental importance of witnesses, jurors, judges and lawyers in the fair trial process, and is therefore already committed to giving them the support and protection which is necessary to enable them to play their full part. As explained above, a wide range of measures are in place or under development which meet the ECHR requirement in this area. This is a detailed risk-based area, where services have to be delivered flexibly to take account of individual circumstances and wider developments; and constraints; and the current system of provision through complementary policy and administrative schemes has proved to be an effective and practical approach. However, the Government will consider carefully any views expressed in this area during the consultation about whether further measures are needed to provide support and protection to witnesses, jurors, judges and lawyers.

**Consultation question**

*(U) Recognizing the current flexible and risk-based approach to providing support and protection to witnesses, jurors, judges and lawyers, do you believe that further measures are needed in this area which should be expressed in a Bill of Rights? If so, what additional steps do you think are necessary?*

## **CHAPTER 10: IMPLEMENTATION AND PROCESS**

10.1 In addition to proposing substantive rights which might be included in a Bill of Rights, the NIHRC has made a number of recommendations in chapter 4 of its Advice relating to the procedures, implementation and enforcement of such a Bill. These recommendations are summarised below along with the Government's response. The Government's views reflect its belief that a Bill of Rights for Northern Ireland should complement and reinforce the application of the HRA throughout the UK.

### **Preamble**

10.2 A Preamble is an introductory section to an Act of Parliament, not forming part of the substantive provisions but setting out the broad principles and purpose of the Act. While rarely included in modern legislation, some examples can be cited; and the NIHRC accordingly recommends that the Bill of Rights should have a Preamble (*Advice, pp. 17-18, 156*). The Government **agrees** that this would be appropriate, both to mark the significance of the Bill and to underline the legislative intention.

10.3 The wording of the Preamble would need to be consistent with the final content of the Bill, when that is decided. However, the Government envisages that it might include an explanation of the historical context giving rise to the Bill of Rights and the steps taken in the Belfast and St Andrews Agreements, as well as a statement of the broad principles on which the Bill would be based, including the principles of equality and mutual respect for the rights and freedoms of everyone in Northern Ireland.

### **Relationship between Bill of Rights and HRA**

10.4 The "Convention Rights" from the ECHR which are incorporated by the Human Rights Act 1998 (HRA) are set out in Schedule 1 to that Act. The NIHRC recommends that Schedule 1 should be re-enacted:

“alongside [the] Supplementary Rights in a separate piece of legislation, with its own enforcement and implementation mechanisms. This separate legislation would constitute a Bill of Rights for Northern Ireland”. (*Advice, p.137*)

10.5 While there would evidently be presentational attractions in including both the Convention Rights and the new supplementary rights in one statute, there is a potential risk that having the Convention Rights set out in two separate Acts in the UK could lead to difficulties in interpretation and application of the rights as well as the potential for the development of divergent lines of authority.

10.6 The risk of parallel regimes emerging in the courts is increased by the NIHRC’s intention that:

“...[the] Bill of Rights would contain **more generous enforcement mechanisms** than are found in the Human Rights Act ....” (*Advice, p. 138*)

and that these stronger mechanisms would apply to the Convention rights as well as the supplementary rights:

“By unifying enforcement mechanisms across all rights, this model avoids having different enforcement mechanisms for Supplementary Rights and Convention Rights...” (*Advice, p. 139*)

10.7 This means that the Convention Rights would be enforced differently by courts in Northern Ireland applying the Bill of Rights compared with courts in the rest of the UK applying the HRA (or, indeed, courts in Northern Ireland hearing HRA cases, since that would continue to apply across the UK). It would mean a difference in the way Convention Rights were applied by cross-UK public authorities as between Northern Ireland and Scotland, Wales and England. And such a scenario would run the risk of creating confusion by

undermining the existing UK-wide enforcement framework for the HRA; and it also appears to be inconsistent with the remit in the Agreement, which was to advise on **supplementary** rights, not to change the effect of the Convention ones.

10.8 The Government is not therefore persuaded that the presentational advantages of re-enacting the Convention Rights in a Bill of Rights for Northern Ireland would outweigh the risks of compromising the universal application of the HRA.

### **Limitations**

10.9 While some of the Convention Rights are absolute – ie they cannot be restricted in any circumstances – it is permissible for many of them to be limited as they are qualified (for example, by balancing them with the general public interest). A comparable limitation clause is therefore required in respect of the supplementary rights contained in a Bill of Rights. The NIHRC accordingly proposes a general limitation provision to govern these rights. (*Advice, pp. 139-141*) The Government agrees in principle with this approach.

### **Derogation**

10.10 It is normally possible for governments to derogate from (ie suspend) certain human rights in times of declared public emergency. The NIHRC proposes a limited derogation clause, which is more stringent than that which the HRA applies to the Convention rights (*Advice, pp. 141-147*). To take two examples, the NIHRC envisages that the maximum duration of a derogation would be three months, as against the five years authorized by the HRA; and it also recommends that “any person or body who has a sufficient interest in the matter” should be able to challenge the declaration of a state of emergency, whereas under the HRA only victims of breaches of Convention rights may bring proceedings. The NIHRC also recommends that a large number of the rights it proposes (going beyond the four “absolute rights” in the

ECHR – that is, Articles 2, 3, 4(1) and 7) should be immune from derogation or suspension. The Government believes, however, that there needs to be clarity and certainty about the procedures governing possible derogation from the Convention rights, and would not favour the Bill of Rights introducing an alternative option in this area which differs significantly from the HRA. The need for a state of emergency and/or derogations may well arise from national, not solely Northern Ireland, circumstances. Subject to any views expressed on this area in the consultation, the Government therefore considers that the Bill of Rights should contain derogation provisions which are consistent and compatible with those set out in the HRA.

### **Entrenchment and amendment**

10.11 The Belfast Agreement provides that the Bill of Rights should be defined through Westminster legislation. The NIHRC Advice accepts this, and further proposes that any amendment to the Bill should also be undertaken at Westminster, but subject to the cross-community approval of the Northern Ireland Assembly (*Advice, pp.148-149*). The NIHRC believes that this would respect the convention under which the UK Government does not normally legislate with regard to devolved matters except with the agreement of the devolved legislature.

10.12 The Government concurs with this analysis, and also believes that a Bill of Rights which at its introduction is clearly supported across the community would be the most powerful and appropriate basis on which to legislate at Westminster.

### **Application**

10.13 In its proposals under this head, the NIHRC recommend that public authorities should be placed under a duty to act compatibly with the rights in a Bill of Rights, to respect and promote them and to have due regard to them in making decisions. It also proposes that the term “public authority” should be defined to include a court or tribunal and

“any person or body performing a public function”.

It sets out (going beyond the formulation in the HRA) a range of factors to be used in determining whether a function is a “public function”, including the stipulation that the existence of a contract as the basis for performance of the public function should not preclude the person carrying out the function from being considered to be a public authority. (*Advice*, pp. 149-150) These recommendations raise two important issues: the definition of a public authority, and the nature of the obligation imposed on it.

10.14 The definition of a public authority is in most cases straightforward. However, there are some difficult issues at the margins, and since the HRA came into force in 2000 there have been a number of judicial decisions on the issue of when private sector providers should be regarded as public authorities. The NIHRC’s approach is designed to

“... make it clear, beyond doubt, that the term “public authority” must be interpreted more broadly than has been the case pursuant to the Human Rights Act 1998”. (*Advice*, p. 151)

The Government understands the arguments for a more wide-ranging definition of public authority. That is why, following the case of *YL v Birmingham City Council and others*<sup>23</sup> (in which the House of Lords held by a majority of three to two that a private sector care home proprietor providing residential accommodation under contract to Birmingham City Council was not a functional public authority and was therefore not bound by the Convention rights), the Government reversed the immediate consequences of that decision through section 145 of the Health and Social Care Act 2008. In addition, the Government continues to consider the practical impact of the *YL* judgment in other sectors.

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<sup>23</sup> UKHL 27 (2007)

10.15 The Government believes that the reach of the Convention rights is unquestionably an area in which a single statutory framework and interpretive regime must apply across the whole of the UK. While the relevant jurisprudence is still developing, it would be premature to seek to crystallize what are thought to be the relevant factors in a Bill of Rights for Northern Ireland alone, since these could well differ from the final position reached by the courts and in legislation. The Government therefore believes that pending further developments the Bill of Rights should abide by the provision in the HRA in respect of the definition of “public authority”.

10.16 Turning to the nature of the obligation placed on public authorities, the European Court of Human Rights at Strasbourg and the former Appellate Committee of the House of Lords have normally focused, in deciding on human rights challenges, on the substantive issue of whether an applicant’s Convention rights have actually been violated – that is, on the outcome of a decision by a public authority. With the exception of those rights which themselves have a procedural content – most notably Articles 5 and 6, where a procedural impropriety could amount to the denial of a Convention right – the courts have not reviewed the decision-making process itself, or required public authorities to demonstrate that they have taken the Convention rights into active consideration throughout that process.

10.17 In two important recent cases (*Miss Behavin’* and *Begum*)<sup>24</sup> the House of Lords upheld the criterion of outcome over process. The NIHRC however wishes the obligation to be **both** outcome and process-based. It summarises the arguments as follows:

“The advantage with process obligations is that they can provide an effective means of mainstreaming rights and of creating a ‘culture of rights’. Disadvantages include either the imposition of onerous duties on public authorities to prove, not only that they acted compatibly with the right, but also that they gave due regard to the right; or indeed the

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<sup>24</sup> *Miss Behavin’ Ltd v Belfast City Council* [2005] NICA 35; [2007] UKHL 19; *R (Begum) v Denbigh High School Governors* [2006] IAC 100; [2007] UKHL 15.

converse, that the public authority might be able to provide a ‘formulaic incantation’ to indicate compliance, thereby rendering the duty meaningless.” (*Advice*, p. 153)

(“Formulaic incantations” was a phrase used by Lord Hoffman in the *Miss Behavin’* case to express concern about a process-based approach.) The NIHRC clearly has in mind the effectiveness of section 75 of the Northern Ireland Act 1998 (which is process-based) in “mainstreaming” the equality duty (see para 5.7 above). However, for all its achievements, the section 75 regime has also been criticized for “an excessive focus on process rather than outcome” while entailing “major resource implications for public and voluntary organisations”.<sup>25</sup> If a similar active duty of process were to be imposed on Northern Ireland public authorities in respect of **all** the rights in a Bill of Rights (not just the equality duty), that could have a highly onerous and cost-intensive impact on them, with an appreciable risk of opening up new areas of litigation and reducing their ability to deliver front-line services effectively. In addition, it would create a distinctly separate regime for enforcing Convention rights in Northern Ireland compared with the rest of the UK. As noted above, the Government is opposed to this on policy grounds. The Government would therefore favour an outcome-based approach to enforcement of the rights in a Bill of Rights, in line with the House of Lords judgments in this area.

## **Standing**

10.18 Under the HRA, only victims – that is, those whose Convention rights have been or would be directly affected by an act or omission – can bring proceedings. In addition, however, the NIHRC and the Equality and Human Rights Commission in Great Britain have been given a limited power to institute proceedings in their own right, so long as there is or would be a victim of the act or omission challenged, and so long as they are not seeking damages. The NIHRC proposes that for the future “any person or body who has a sufficient interest” should be able to bring legal proceedings in

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<sup>25</sup> See Chaney, P. and Rees, R. “The Northern Ireland Section 75 Equality Duty: An International Perspective,” 2004, p.30.

connection with the Bill of Rights, with the test of “sufficient interest” to be determined by the courts “having regard to the need to ensure access to justice”. (*Advice*, pp. 154–155)

10.19 The NIHRC’s proposal would be likely to lead to an increase in challenges by NGOs and voluntary bodies to public authorities about alleged rights violations, and also in satellite litigation to determine if persons or groups do indeed have “sufficient interest” in the matter. The Government has some concerns that this increase in legal proceedings – particularly in a period of financial stringency – might distract public authorities from their core service delivery tasks. In addition, differing provisions between Northern Ireland and Great Britain about who can initiate rights cases could impair the uniform HRA enforcement framework. At the same time, the Government recognises the benefits of widening access to rights, and will consider carefully, in the light of consultation responses, whether there is a case for enabling any other bodies or individuals to bring human rights challenges against public authorities.

#### **Consultation question**

(V) *Do you believe that any other individuals and organisations, in addition to victims and the Human Rights Commission, should be able to start human rights cases against public authorities?*

#### **Interpretation**

10.20 The NIHRC proposes (*Advice*, pp. 155-157) an interpretation framework for the Bill of Rights drawing both on the Preamble (see paragraphs 10.2 and 10.3) and on a wider and more purposive duty placed on the courts (including the obligation to take international human rights law into account). The Government agrees in principle with the idea of a Preamble, but has some concerns that the wider duty (covering the common law as well as statutory provisions) could lead to different lines of authority emerging in

the interpretation of the Convention rights. Subject to any views expressed during the consultation, the Government believes that any developments in this area should be consistent with current interpretive conventions relating to human rights.

### **Devolved and non-devolved issues**

10.21 The Government agrees in principle with the NIHRC's proposals in this area (Advice, pp. 158-164), which focus on the arrangements for measuring the compatibility of legislation with the Bill of Rights. However, this is subject to any views expressed in consultation, and to further consideration of the feasibility of the proposed regime for declarations of incompatibility in respect of Westminster legislation.

### **Justiciability**

10.22 The Government agrees with the NIHRC's proposal that the rights in a Bill of Rights should be justiciable. (Advice, pp. 164-166) It believes however that the rights which the NIHRC describes as "subject to progressive realisation" in general fall outside the criteria set in the Agreement for inclusion in the Bill of Rights (ie to reflect the particular circumstances of Northern Ireland and the principles of mutual respect and parity of esteem for both communities), but should instead be considered in the national debate on rights and responsibilities. (See chapter 3.)

### **Enforcement mechanisms**

10.23 The NIHRC proposes that:

- (i) the Bill of Rights should be enforced through the existing judicial system (i.e. not a special Human Rights Court);
- (ii) judicial appointments must be such as to ensure an independent and diverse judiciary, which is, as far as practicable, broadly representative of society in Northern Ireland;

- (iii) the NIHRC should be given statutory powers to monitor and audit compliance with a Bill of Rights for Northern Ireland;
- (iv) the Assembly should be invited to establish a committee to perform for Northern Ireland a role analogous to the Joint Committee on Human Rights at Westminster – e.g. scrutiny of draft legislation for compliance with the Bill of Rights; and
- (v) the implementation of the Bill of Rights should be reviewed every five years.

10.24 The Government is broadly content with these proposals, save in relation to any proposal to change the arrangements for judicial appointments.

The arrangements for judicial appointments in Northern Ireland were comprehensively examined in the Criminal Justice Review,<sup>26</sup> and a fundamentally new system, involving the creation in 2005 of the independent Judicial Appointments Commission, was established under the Justice (NI) Acts 2002 and 2004 (with some subsequent provisions under the Northern Ireland Act 2009). The Advice does not mention these developments. As the Review said:

“Individual judges and magistrates, in carrying out their functions, do not “represent” any particular section of society; rather they should apply objective and impartial consideration to the facts of the case before them, regardless of the background of the parties.”

At the same time, and subject to the overriding requirement of merit, there should be

“... a programme of action to secure the development of a judiciary that is ... reflective of Northern Ireland society ...”<sup>27</sup>

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<sup>26</sup> “Review of the Criminal Justice System in Northern Ireland” (March 2000), pp. 107-147.

<sup>27</sup> “Review”, op. cit., p. 130.

The statutory remit of the Judicial Appointments Commission is in line with this prescription, and the Government therefore sees no case to amend these recently modernised arrangements which are working entirely satisfactorily.

## **Remedies**

10.25 The NIHRC's main proposal here is that the courts must grant an effective remedy (including compensation where appropriate) to everyone whose rights under a Bill of Rights have been or may be violated. As the NIHRC says, this proposal offers stronger access to remedies than the comparable provisions in the HRA (*Advice, p.171*). There has been significant judicial consideration in recent years, both domestically and in the ECtHR, of what constitutes an effective remedy for a breach of Convention rights.<sup>28</sup> This is an area in which it is particularly important to have a consistent national approach; and the Government would be concerned that establishing different provisions for remedies in Northern Ireland could have unintended consequences across the rest of the UK. The Government therefore believes that the Bill of Rights should contain broadly the same provision for remedies as the HRA.

## **Outstanding legal issues**

10.26 In this section the NIHRC recommends measures to achieve compatibility between the Bill of Rights and other human rights statutes and instruments to which the UK is a party, and to enable the courts to determine when it is appropriate to permit legal persons (eg corporations or companies) to rely on the Bill of Rights. The Government is in principle content with these proposals.

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## **CHAPTER 11: IMPACT AND EQUALITY CONSIDERATIONS**

11.1 Some of the ideas discussed in this paper might have an impact on the private sector, the third sector and public services. Government policy in relation to a Bill of Rights has not been finalised, and the Government will take into account the views of consultees before framing final proposals for the content of a Bill of Rights. At that stage, the Government will need to carry out an Impact Assessment in relation to any impact on the private sector, the third sector or public services.

11.2 Section 75 of the Northern Ireland Act 1998 requires the Northern Ireland Office, in carrying out its functions to *“have due regard to the need to promote equality of opportunity –*

- (a) between persons of different religious beliefs, political opinion, racial group, age, marital status or orientation;*
- (b) between men and women more generally;*
- (c) between persons with a disability and persons without; and*
- (d) between persons with dependents and persons without.”*

The NIO must also *“have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.”*

11.3 Equality and good relations are central themes of this consultation, spanning considerations across all five categories (*outlined in Chapters 5 to 9, with proposals summarised at Appendix 1*), and all are intended to have a positive impact on people across the section 75 categories. As mentioned above, policy development will be affected by the outcome of this consultation. Any policies that arise from this consultation will be screened for their impact on equality of opportunity in accordance with guidance produced by the Equality Commission for Northern Ireland. If it emerges that a policy could have adverse implications for equality of opportunity for any of the section 75 equality categories, an Equality Impact Assessment will be carried out and ways of either avoiding or mitigating the effect considered.

11.4 It is essential that a Bill of Rights for Northern Ireland protects and promotes equality of opportunity and good relations. As part of this consultation exercise we would welcome your views on possible implications for equality and good relations of the proposals in the paper (summarised at Appendix 1). In particular, we would welcome any comments in relation to the following questions:

**Consultation questions – equality and good relations considerations**

*(AA) Do you believe that any of the proposals outlined at Appendix 1 will have a positive impact on people within any of the section 75 categories?*

*(BB) Do you believe that any of the proposals outlined at Appendix 1 will have an adverse impact on people within any of the section 75 categories?*

*(CC) If so, are there any measures that should be implemented to mitigate against adverse impact on people in the section 75 categories?*

*(DD) Will any of the proposals affect the promotion of good relations between persons of different religious belief, political opinion or racial group?*

*(EE) Do you have any other comments on the equality impact of these proposals?*

## **CHAPTER 12: HOW TO RESPOND TO THIS CONSULTATION DOCUMENT**

12.1 When responding to this consultation document, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where appropriate, how the views of the members were assembled. If you wish to use a template form for your response, a pro forma is available on the NIO website ([www.nio.gov.uk/index/public-consultation/documents.htm](http://www.nio.gov.uk/index/public-consultation/documents.htm)) or on request at the address below.

12.2 Please submit your response to this consultation by post, fax, email or text phone to:

**Post:** Bill of Rights Consultation  
Northern Ireland Office  
Stormont House  
Stormont Estate  
Belfast  
BT4 3SH

**Email:** [billofrights@nio.x.gsi.gov.uk](mailto:billofrights@nio.x.gsi.gov.uk)  
**Telephone:** 0207 210 6584  
**Fax:** 0207 210 6565  
**Text phone:** 028 9052 7668

### **Closing date**

12.3 Responses must be received by Monday 1 March 2010.

### **Additional copies**

12.4 Additional copies of this consultation document may be made without seeking permission from the Northern Ireland Office. Printed copies may be obtained by post by contacting the Northern Ireland Office using the details

above. Please tell us if you know of others who would be interested in receiving this consultation document.

### **Alternative formats**

12.5 An electronic version is available on the NIO website at [www.nio.gov.uk/index/public-consultation/documents.htm](http://www.nio.gov.uk/index/public-consultation/documents.htm). Copies in various other formats, including large print, Braille, audio cassette, computer disk etc may be made available on request. If you wish to access the document in an alternative format or language, please let us know and we will do our best to assist you.

### **Confidentiality**

12.6 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

12.7 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

12.8 The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## **After the consultation**

12.9 At the end of the consultation period, the Government will analyse all the responses and a summary of responses will be published on the NIO website after the end of the consultation period.

## **The Consultation Criteria**

12.10 The Government has adopted a set of criteria for consultations, which apply to public consultations by government departments. These are set out below.

### *Criterion 1 When to consult*

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

### *Criterion 2 Duration of consultation exercise*

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

### *Criterion 3 Clarity of scope and impact*

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

### *Criterion 4 Accessibility of consultation exercises*

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

### *Criterion 5 The burden of consultation*

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

*Criterion 6 Responsiveness of consultation exercises*

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

*Criterion 7 Capacity to consult*

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The code does not have legal force but is regarded as binding on UK departments and their agencies unless Ministers conclude that exceptional circumstances requires a departure from it. The full code may be viewed at:

[www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html](http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html)

## **Complaints**

12.11 If you have any concerns or complaints about this consultation, or you have any other observations about ways of improving the consultation process, please contact the Northern Ireland Office's consultation coordinator, Donna Knowles, at

**Post:** Central Management Unit  
Northern Ireland Office  
Castle Buildings  
Stormont Estate  
BELFAST  
BT4 3SH

**Tel:** 028 9052 8138

**Textphone:** 028 9052 7668

**Email:** [donna.knowles@nio.x.gsi.gov.uk](mailto:donna.knowles@nio.x.gsi.gov.uk)

## **APPENDIX 1: SUMMARY OF PROPOSALS**

On **equality, representation and participation in public life**, the Government proposes to:

- CONSIDER with the Executive additional equality protections (either in the form of a general declaratory provision that everyone in Northern Ireland is equal before the law and has equal rights, or by broadening the existing protections to cover more groups).
- INCLUDE a right freely to vote in and be elected at genuine periodic elections held by secret ballot (subject to reasonable restrictions).
- INCLUDE a general principle could be that any electoral system should provide for both main communities to be fairly represented.
- INCLUDE a general principle of inclusive and equitable representation in the Assembly.
- CONSIDER with the Executive a general principle of inclusive and equitable representation at local government level.
- CONSIDER with the Executive a requirement that the membership of public bodies should, as far as practicable, be representative of the community in Northern Ireland.

On **identity, culture and language**, the Government proposes to:

- INCLUDE the right of the people of Northern Ireland to identify themselves and be accepted as Irish or British or both.
- CONSIDER with the Irish Government associated rights for the people of Northern Ireland to hold British and Irish nationality.
- CONSIDER with the Executive extending the existing duty on public authorities around promoting good relations, so that public authorities would also have regard to the need to promote a spirit of tolerance, dialogue and mutual respect; and to the need to respect the identity and ethos of the two main communities.
- CONSIDER a right not to swear an oath that is contrary to a person's religion or belief. (The consultation paper asks whether such protection is already sufficiently provided by the ECHR).

- CONSIDER with the Executive whether there are additional language protections that could be included.

On **sectarianism and segregation** the Government proposes to:

- INCLUDE a duty on public authorities to prevent sectarian violence and harassment.
- CONSIDER where there is a need for additional protections to prevent individuals from being forced out of their home by sectarian intimidation or harassment.

On **victims and the legacy of the conflict** the Government proposes to:

- CONSIDER a provision about the ongoing investigation of deaths attributable to the conflict.
- CONSIDER with the Executive provision to ensure the needs of victims and survivors of the conflict are addressed. This would need to take account of existing work by the Commissioners for Victims and Survivors on the needs of victims.

On **criminal justice** the Government proposes to:

- CONSIDER whether there is any provision that might be made about the treatment of suspects and access to lawyers and medical practitioners, to help allay concerns arising from the past.
- CONSIDER whether any further measures are needed to provide support and protection to witnesses, jurors, judges and lawyers.

## **APPENDIX 2: CONSULTATION QUESTIONS**

### **Equality, representation and participation in public life**

(A) Do you believe a Bill of Rights for Northern Ireland should contain a statement that everyone in Northern Ireland is equal before the law and has equal rights? What might be the practical and legal implications of such a statement?

(B) The grounds on which discrimination in Northern Ireland is currently unlawful include religious belief, political opinion, race, age, gender, gender reassignment, marital status, sexual orientation, and disability. Do you believe that any other “protected categories” particular to Northern Ireland should be added to this list? Some examples might be:

- nationality;
- national origin;
- family or carer status;
- irrelevant criminal record.

(C) Public authorities also have a duty to have due regard to the need to promote equality of opportunity.

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and
- between persons with dependants and persons without;

Do you believe that they should be given this duty in respect of any other groups?

### **Identity, culture and language**

(D) Do you agree that a right freely to vote in and be elected at genuine periodic elections held by secret ballot should be included in a Bill of Rights, subject to reasonable restrictions?

- (E) Do you believe that the Bill of Rights should include the principle that any electoral system used in Northern Ireland should provide for both main communities to be fairly represented?
- (F) Do you believe that the Bill of Rights should also require that the structures of the Assembly and local government should enable proportionate and fair participation by elected representatives?
- (G) Do you believe that there should be a requirement for the membership of public bodies to, as far as practicable, be representative of the community in Northern Ireland?
- (H) Do you believe that any other provisions (whether or not discussed above) should be included in a Bill of Rights to help secure fundamental democratic rights in Northern Ireland?
- (I) Do you agree that the right of the people of Northern Ireland to identify themselves as British or Irish or both should be included in a Bill of Rights?
- (J) Do you agree that the right of the people of Northern Ireland to hold British and Irish citizenship should be included in a Bill of Rights?
- (K) Is there a need for the existing obligations on public authorities in the equality field to be consolidated into a Bill of Rights?
- (L) Do you believe there are areas in which the identity and ethos of the two communities is not sufficiently protected by the existing equality legislation? If so, should an additional obligation be placed on public authorities in this respect?

(M) Do you believe that there is a need to extend the existing obligations on public authorities, by requiring them also to have regard to the desirability of promoting a spirit of tolerance, dialogue and mutual respect between people? What might the practical effect of such additional obligations be?

(N) Do you believe that the ECHR offers insufficient protection from the requirement to swear an oath that is contrary to an individual's religion or belief? If so, what additional protection might be needed in a Bill of Rights? How might it be framed?

(O) Do you believe that there are additional protections in relation to Irish or Ulster Scots that should be included in a Bill of Rights? What form might such protections take?

#### **Tackling segregation and sectarianism**

(P) Do you agree that any Bill of Rights should include a measure aimed at combating sectarian violence or harassment? Should such a measure take the form of a duty placed on public authorities? If so, which public authorities should be included?

(Q) Do you believe that there is a need for a Bill of Rights to contain additional protections to prevent individuals from being forced out of their home by intimidation or harassment, in addition to any general measures aimed at combating sectarian violence or harassment? If so, what role might public authorities play?

### **Victims and the legacy of the conflict**

(R) Should a provision about the ongoing process of re-examination of deaths related to the conflict be included in a Bill of Rights? If so, how should this be expressed?

(S) Should provision be made in a Bill of Rights relating to victims of the conflict? How should such a provision relate to the work that is currently under way around the definition and the needs of victims?

### **Criminal Justice**

(T) The Government recognises that there have, in the past, been substantial concerns about aspects of the criminal justice system including the treatment of suspects, stemming from the history of the conflict in Northern Ireland. Many legislative safeguards have already been put in place to meet these concerns, but the Government would welcome views on whether there is any further specific provision that might be made in a Bill of Rights on this issue.

(U) Recognizing the current flexible and risk-based approach to providing support and protection to witnesses, jurors, judges and lawyers, do you believe that further measures are needed in this area which should be expressed in a Bill of Rights? If so, what additional steps do you think are necessary?

### **Implementation**

(V) Do you believe that any other individuals and organisations, in addition to victims and the Human Rights Commission, should be able to start human rights cases against public authorities?

**Consultation questions – equality considerations**

(AA) Do you believe that any of the proposals outlined at Appendix 1 will have a positive impact on people within any of the section 75 categories?

(BB) Do you believe that any of the proposals outlined at Appendix 1 will have an adverse impact on people within any of the section 75 categories?

(CC) If so, are there any measures that should be implemented to mitigate against adverse impact on people in the section 75 categories?

(DD) Will any of the proposals affect the promotion of good relations between persons of different religious belief, political opinion or racial group?

(EE) Do you have any other comments on the equality impact of these proposals?

### **APPENDIX 3: NIHRC PROPOSALS IN FULL**

Those rights which, in the Government's view, could be said to reflect the particular circumstances of Northern Ireland and the principles of mutual respect for the identity and ethos of both communities are indicated with an asterisk.

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

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

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

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

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

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

	<p>14.4. Women and girls have the right to access gender-sensitive and appropriate healthcare services and information.</p>
<b>15</b>	<b>The right to an adequate standard of living</b>
	<p>15.1. Everyone has the right to an adequate standard of living sufficient for that person and their dependents. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.</p> <p>15.2. No-one shall be allowed to fall into destitution.</p>
<b>16*</b>	<b>The right to accommodation</b>
	<p>16.1. Everyone has the right to adequate accommodation appropriate to their needs. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.</p> <p>16.2.* No one may be forced out of their home by threats or harassment or evicted without an order of a court. Public authorities must take all appropriate measures to ensure the protection of this right.</p> <p>16.3. Everyone has the right to appropriate emergency accommodation.</p>
<b>17</b>	<b>The right to work</b>
	<p>17.1. Everyone has the right to work, which includes the right to the opportunity to gain their living by work which they freely choose or accept. Public authorities must take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.</p> <p>17.2. Everyone has the right to enjoyment of just and favourable conditions of work irrespective of the status of the worker, including:</p> <ol style="list-style-type: none"> <li>a) remuneration which provides all workers, as a minimum with: <ol style="list-style-type: none"> <li>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;</li> <li>ii) decent living for themselves and their families;</li> </ol> </li> <li>b) safe and healthy working conditions;</li> <li>c) freedom from all forms of unfair discrimination and from harassment including taking all appropriate measures to eliminate discrimination against women in the field of employment, including on the grounds of pregnancy or maternity;</li> <li>d) rest, leisure and reasonable limitation of working hours and periodic</li> </ol>

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

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

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

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

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