

RIGHTS AND SAFEGUARDS

Paper by the British Government, Relevant to all Three Strands.

For many people human rights issues have been at the core of Northern Ireland's troubles since 1969. It is true in Northern Ireland where questions about, among other things, civil rights, fair employment, emergency powers, and the rights of those accused of crime remain controversial. It is true too for outside observers, particularly in the Republic of Ireland, the United States and in the NGOs, where the United Kingdom's adherence to its international obligations on human rights provides the focus for attention and criticism. And in plural societies like Northern Ireland, specially where the plurality is marked by hostility, human rights may sometimes be seen as a game of winners and losers. That said, there is a great deal of cross-community support in Northern Ireland for the protection of human rights. Eventually, then, action on the protection of rights may be of great significance for the achievement of lasting settlement.

2. Because "rights" can mean different things to different people it will be important to make an early decision about the extent of the rights agenda in the talks process. There is a classical, narrow definition of individual human rights centering on political and fundamental legal rights - rights which are subject to a number of national and international protections - but modern rights discourse stretches much further, into issues of ethnicity, gender, sexual orientation, fertility, employment rights, and sometimes into questions of cultural and collective or community rights. If human rights are to be a priority in

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any new settlement, it will be important to know what rights are to be protected.

Existing and Planned Measures for the Protection of Rights

3. An extensive range of protections for rights already exists in Northern Ireland. For example, the powers available to the security forces and the courts are heavily balanced by safeguards against abuse. There is a range of mechanisms in place for oversight of the workings of anti-discrimination provisions. Any new measures for the protection of rights will build on these and on the future plans that the Government has already announced. The most significant of these was the publication last month of the Human Rights Bill and the White Paper which contain plans to incorporate the European Convention on Human Rights into United Kingdom law. There are two major elements to the proposals:

- It will be unlawful for public authorities such as the Government to act in a way which is incompatible with the Convention. People whose rights have been violated would be able to bring legal proceedings against public authorities, and the courts will be able to give whatever remedy is open to them and seems appropriate.
- All legislation will in future have to be interpreted as far as possible in a way which is compatible with the Convention. If that cannot be done, the higher courts will be able to make a

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declaration that it is incompatible. It would then be up to the Government and Parliament to put matters right. The Bill contains a fast-track procedure for amending legislation to bring it into line.

4. The basic purpose of the Bill is to give people easier access to their rights under the European Convention on Human Rights by allowing them to enforce those rights against public authorities in the domestic courts rather than having to incur the cost and delay of taking a case to the European Court of Human Rights in Strasbourg.
5. The courts will not be able to set aside Acts of the Westminster Parliament that are incompatible with the Convention as that would be inconsistent with the United Kingdom's tradition of parliamentary sovereignty. However, the courts will be able to set aside most Northern Ireland Orders in Council, which are to be treated as subordinate legislation for the purposes of the Bill. The Government envisages that the courts should also be able to set aside any measures of a new Northern Ireland legislature which are incompatible with the Convention.
6. No special protection for rights in Northern Ireland is included in the Bill. A key feature for discussion in the talks is the extent which there is a need to develop specific additional rights protections to deal with the unique problems of the divided community in Northern Ireland

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7. Nor does the Bill does provide for a United Kingdom Human Rights Commission, although the Government has not rule this out in future. This question has implication for existing rights protection bodies. In Northern Ireland the role of SACHR would have to be considered. There is an important distinction between SACHR's *advisory role* and *the regulatory functions* of the FEC, EOC(NI), Disability Council for Northern Ireland, and CRE(NI), and that would have to be taken into account when examining their roles and relationships to any new Commission, whether it was UK-wide or a separate Northern Ireland body.

Frameworks for the Future

8. The question of rights protection was covered in *Frameworks for the Future*, which states that:

Protection for specified civil, political, social and cultural rights would be reinforced in respect of a range of matters including those for which the new political institutions would have responsibility, on the basis arrived at in consultation with the parties. The means of such protection would accord with the constitutional arrangements of the United Kingdom, and could build on existing safeguards. The aim will be to insure that under any political settlement legislation and executive action will operate fairly and impartially so as to ensure the protection of these agreed rights and to inspire the confidence of everyone in Northern Ireland.

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The British and Irish Governments together noted that:

There is a large body of support, transcending the political divide for the comprehensive protection and guarantee of fundamental human rights. Acknowledging this, both Governments envisage that the arrangements set out in this Framework Document will be complemented and underpinned by an explicit undertaking in the Agreement on the part of each government, equally to ensure in its jurisdiction in the Island of Ireland, in accordance with its constitutional arrangements, the systematic and effective protection of common specified civil, political, social and cultural rights. They will discuss and seek agreement with the relevant political parties in Northern Ireland as to what rights should be so specified and how they might best be further protected, having regard to each Government's overall responsibilities including its international obligations. Each Government will introduce appropriate legislation in its jurisdiction to give effect to any such measure of agreement.

The Rights Agenda in the Talks Process

9. The details of any new human rights arrangements will have to be reached through dialogue and negotiations. There might be benefit in opening up the discussion beyond the talks participants, perhaps by inviting academics or NGOs to contribute their expertise. There will probably be some deep disagreements over the kind of rights which

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ought to be protected, and differences about the ways in which protection can be secured and entrenched.

10. The objectives of the talks participants should be to achieve agreement on the form and scope of the institutions, procedures or judicial checks needed for the protection of human rights. All parties to any new settlement should have confidence that adequate and effective safeguards against abuses of human rights will operate in a fair and impartial way, meeting Northern Ireland's particular needs, but providing levels of protection at least as effective as those elsewhere in the UK.

Issues to be addressed

11. The main issues that will need to be covered in achieving this are:

- The extent to which existing (and planned) safeguards provide manifestly effective standards of protection.
- Whether new specific safeguards are needed for Northern Ireland.
- What remedies and machinery for corrective action are needed.
- How abuses should be deterred.
- Whether social and economic rights should be on the agenda.

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- How "cultural rights" should be defined, and whether any specific protection for them is needed.
- The attraction of a "Bill of Rights" specifically for Northern Ireland.
- Whether there is a need for more general constitutional rights of non-discrimination aimed at preventing a new local administration from behaving in a discriminatory way.
- The desirability of having protected rights in both the Republic of Ireland and in Northern Ireland which mirror each other.

Relevant Strand

12. The main strand here is Strand 1, but the UK-wide policy, practice and legal framework for key human rights issues, and the possibility (on the basis of *Frameworks*) that the Irish Government would want to introduce parallel legislation in the Republic to give effect to any agreement, mean that there is likely also to be some discussion in Strands 2 and 3.