

RIGHTS AND SAFEGUARDS: PAPER BY THE BRITISH GOVERNMENT

There is a great deal of cross-community support in Northern Ireland for formal mechanisms for the protection of human rights. In the Government's view, action on the protection of rights will be of central significance for the achievement of a lasting settlement. "Rights" can mean different things to different people. It will therefore 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. It is therefore important to establish what rights are to be protected.

The Government's Existing Agenda

2. The Government was elected with a manifesto commitment to help build trust and confidence among both main traditions in Northern Ireland by acting to guarantee human rights, strengthen confidence in policing, combat discrimination and reduce tension over parades. It has already been acting to enhance the protection of rights in those areas where it can do so immediately. There is an active agenda here. For example, the Government has already indicated that it proposes to take action on certain recommendations of the Standing Advisory Commission's major report on employment equality. These include clarification of the law on direct recruitment of the long-term unemployed and firmer powers against persistent discriminators. The Government will give its response to the full range of SACHR's proposals early this year, and those recommendations which are accepted by the Government will be implemented as appropriate. The Government has introduced legislation in the important and sensitive area of parades. And it has introduced a bill aimed at making policing more accountable and acceptable to both communities.

3. The most significant recent development on human rights on a UK-wide basis was the publication last year of the White Paper and the Human Rights Bill which "brings home" the rights contained in the

European Convention on Human Rights and so enables people to enforce their convention rights in the Courts of the UK. The main elements to the proposals in the Bill are summarised in the note attached at Annex A.

4. 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

5. Nor does the Bill does provide for a United Kingdom Human Rights Commission, although the Government has not ruled 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 and Heads of Agreement

6. The Government's position on the question of rights protection was covered in the 1994 document *Frameworks for the Future*, which stated 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.

7. More recently, the *Propositions on Heads of Agreement*, published in January, envisaged:

Provision to safeguard the rights of both communities in Northern Ireland, through arrangements for the comprehensive protection of fundamental human, civil, political, social, economic and cultural rights, including a Bill of Rights for

Northern Ireland supplementing the provisions of the European Convention and to achieve full respect for the principles of equity of treatment and freedom from discrimination, and the cultural identity and ethos of both communities. Appropriate steps to ensure an equivalent level of protection in the Republic.

The Rights Agenda in the Talks Process

8. The details of any new human rights arrangements will have to be reached through dialogue and negotiations. It is the Government's view that there would be benefit in opening up the discussion beyond the talks participants, perhaps by inviting academics or NGOs to contribute their expertise. It would be natural, for example, to ask SACHR for their views on these issues. The Government has already been consulting interested parties on what is needed for the further protection of rights in Northern Ireland, and hopes to develop this process further. There may be some existing models for rights protection whose contents could be adapted for use in a Northern Ireland context. For example, elements of other countries' mechanisms for the protection of rights, or provisions of certain international instruments on human rights issues might contain elements which could be applied in a specific Northern Ireland context (a list of the UK's main existing international obligations in this area is attached at Annex B).

9. 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

10. The first question that talks participants might consider is what the agenda is to cover - for example:

- whether social and economic rights should be included;

- how “cultural rights” should be defined, and whether any specific protection for them is needed.

11. This will then lead to consideration of the extent to which existing (and planned) safeguards already provide effective standards of protection; and whether new specific safeguards are needed for Northern Ireland. The main questions here include:

- the attraction of a “Bill of Rights” specifically for Northern Ireland, and how rights can be “entrenched”; and
- 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.

12. Finally, participants should examine how the proposals will work out in practice, i.e:

- what remedies and machinery for corrective action are needed; and
- how abuses should be deterred;

This will include consideration of what institutions will be involved in overseeing the arrangements - for example, what powers the courts should be given, and whether a special court needs to be created which will be dedicated to human rights issues. It also includes the question of the need for a Human Rights Commission, which might be based on the existing SACHR; what powers and responsibilities it should have; to whom it should be responsible; and who should appoint it

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ANNEX A

THE HUMAN RIGHTS BILL

There are two major elements to the proposals in the Human Rights Bill, which will enable people to enforce their rights under the European Convention on Human Rights in the courts of the UK.

- 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 will 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 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.

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.

These rights are those contained in Articles 2-12 and 14 of the European Convention on Human Rights, and Articles 1-3 of the First Protocol to the Convention. These include, for example, the right to a fair trial; the right to respect for private and family life and the right to freedom of expression.

The Bill will apply to public authorities - essentially those bodies which exercise public functions. In particular, it will apply to the Government and the courts. It will not apply to Parliament, whose

sovereignty is guaranteed by the 1688 Bill of Rights. It will be unlawful for public authorities to act in a way which is incompatible with the Convention rights. In practice, this means that people who think their rights have been violated by, for example, the action of Ministers or officials will be able to bring legal proceedings against the Government, or alternatively rely on the Convention as a defence in proceedings brought against them by the Government. If the courts find that a public authority has acted unlawfully, they will be able to give whatever remedy is open to them and seems just and appropriate. That will include damages, but the courts will have to take into account the practice of the European Court of Human Rights in this area. The objective is that people should obtain compensation from public authorities in the same circumstances and of the same amount as they would have received from the Court in Strasbourg.

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. In such cases the higher courts - essentially the High Court, Court of Appeal and House of Lords - will be able to make a declaration that the legislation is incompatible. This will prompt the Government and Parliament to amend the law. 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, and which is what the Government is also proposing for Acts of the Scottish Parliament and measures of the Welsh Assembly. This category of legislation comprises Orders in Council under the Northern Ireland (Temporary Provisions) Act 1972; Acts of the Northern Ireland Parliament; measures and certain Orders in Council made under the Northern Ireland Act 1974. Such legislation is a temporary means of enacting primary legislation which would otherwise be done by measures of a devoted Northern Ireland legislature. 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.

The Bill also requires a Government Minister introducing legislation to publish a statement that its provisions are compatible with the Convention - or else to state that he cannot make such a statement but still wishes Parliament to consider the Bill. This will have a direct and

beneficial impact on the preparation of Government legislation before it is introduced into Parliament.

ANNEX B

UNITED KINGDOM'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

1. The United Kingdom's main obligations are as follows. They are divided into legally binding obligations, and commitments arising from political agreements and declarations.

Legally Binding Obligations

2. The United Kingdom is a party to the six core international human rights treaties:

- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- International Convention on the Elimination of All Forms of Racial Discriminations;
- Convention on the Elimination of All Forms of Discrimination against Women;
- Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment; and
- Convention on the Rights of the Child.

3. Added to this are the United Kingdom's obligations under ILO Conventions which cover various economic and social rights (eg the rights to work, to favourable conditions of work, to fair employment practices, to form and join trade unions) and some civil and political

rights (eg freedom of association, the right to organise and the right of peaceful assembly). There are over 160 ILO Conventions.

4. The United Kingdom is also a party to a number of other human rights related conventions, dealing with refugees, genocide and slavery for example.

5. At the regional level, the United Kingdom is a party to a number of human rights conventions administered by the Council of Europe.

- European Convention for the protection of Human Rights and Fundamental Freedoms, and a number of its Protocols (The Government has announced that this is to be incorporated into the United Kingdom law. The recent White Paper on incorporation sets out the extent of the rights protected);
- European Social Charter (n.b. not to be confused with the EU Social Chapter);
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; and
- The Framework Convention on the Protection of National Minorities.

6. The Amsterdam Treaty includes provisions relating to discrimination in the context of the European Union.

Politically binding commitments

7. The United Kingdom has also either joined a consensus, or voted in favour of, many UN human rights declarations or other exhortatory instruments. These are not legally binding. They do not require any domestic ratification. But by agreeing to them, the United Kingdom has at least a political commitment to respect them.

- UN Universal Declaration of Human Rights (subsequently put into legally-binding form by the two Covenants mentioned above);
- Declaration on the Elimination of All Forms of Intolerance and

of Discrimination Based on Religion or Belief;

- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; and
- Standard Minimum Rules for the Treatment of Prisoners.

8. At the regional level, the United Kingdom has similar political commitments through a number of C/OSCE agreements. In the human rights - or to use OSCE parlance the "human dimension" - field, the main ones are the:

- 1975 Helsinki Final Act;
- 1990 Charter of Paris; and
- 1992 Helsinki, Challenges of Change document.