



**Human Rights Consortium submission to the
Universal Periodic Review of the United Kingdom**

Fourth Cycle

March 2022

About Us

1. The Human Rights Consortium is a human rights charity and coalition of civil society organisations from across Northern Ireland which was established in 2000. Our membership includes almost 170-member organisations from a range of community and voluntary grassroots groups, NGOs and Trade Unions, drawn from all sections of the community and all parts of Northern Ireland. We work together towards the development of a human rights based Northern Ireland.

Human Rights Act

2. In the third cycle review of the United Kingdom (UK) a large number of members states made specific recommendations regarding the UK's plan to introduce a British Bill of Rights and scrap the Human Rights Act (HRA).¹ The clear focus of all these interventions were to urge the UK to ensure that any process of developing a British Bill of Rights did not undermine or remove the Human Rights Act and that any Bill of rights would enhance and build upon the European Convention of Human Rights (ECHR) protections as currently experienced via the HRA rather than regress or remove those standards.
3. In the intervening period there was an initial lull in the UK Governments plans to scrap the HRA. This pause was largely due to the ongoing process of the UK's withdrawal from the European Union and the intensive resources required for those preparations. In 2019 the Conservative party made an election manifesto commitment to 'update the Human Rights Act'.² In December 2020 it appointed the Independent Review of the Human Rights Act (IHRAR)³ panel which was tasked with considering how the Human Rights Act is working in practice and whether any change is needed. After a public consultation the Panel submitted a detailed report to the Government which was published in December 2021⁴. The report did not recommend any changes to the HRA which would have fundamentally undermined the protection of Convention rights but did make recommendations for a programme of

¹ Recommendations 134.67 (Ireland), 134.77 (Belarus), 134.74 (Thailand), 134.68 (Kazakhstan), 134.69 (Kenya), 134.70 (Mexico), 134.71 (Namibia), 134.72 (Portugal), 134.73 (Switzerland), 134.75 (Ukraine), 134.76 (Uzbekistan)

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2Flibdocs%2FHRRBodies%2FUPR%2FDocuments%2FSession27%2FGB%2FMatriceRecommendationsUK.docx&wdOrigin=BROWSELINK>

² 'We will update the Human Rights Act and administrative law to ensure that there is a proper balance between the rights of individuals, our vital national security and effective government.' Pg 48 Conservative Party 2019 Westminster election manifesto. <https://www.conservatives.com/our-plan/conservative-party-manifesto-2019>

³ Independent Human Rights Act Review <https://www.gov.uk/guidance/independent-human-rights-act-review>

⁴ The Independent Human Rights Act Review: Full Report https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040525/ihrar-final-report.pdf

civic and constitutional education on human rights in schools, universities and adult education.

4. Despite this advice the UK Government chose to ignore the restricted scope of these recommendations and proceeded on the same day as the IHRAR report was released to publish its own consultation exercise on proposals to replace the Human Rights Act with a Bill of Rights.⁵ The proposals range from specific detailed legislative changes to broad questions over how specific Convention rights or HRA clauses could or should apply in a new Bill of Rights. While the proposals commit to retaining legal access to the Convention rights in the UK, the broader impact of the proposed changes if applied would be to substantively weaken the level of protection and access to those Convention rights from that which currently exists.
5. This includes weakening the way in which European Court of Human Rights judgments are considered by domestic courts. Introducing a new permission stage which would mean further barriers to taking legal action under the HRA. Undermining or removing the power to strike down secondary legislation that was not compliant with Convention rights. Interfering with the positive obligations placed on public authorities to protect Convention rights and changes that would limit access to HRA protections for minority groups.
6. Perhaps most concerning is the Governments distinct failure to take account of the range of problems and concerns that these proposals will create for those in devolved areas of the UK. Our own devolved government in Northern Ireland was based on the commitments to human rights and equality in the Belfast/Good Friday Agreement such as the Human Rights Act. To undermine or remove those commitments is to tamper with a finely balanced set of relationships that could destabilise the institutions and safeguards that underpin our peace process.
7. If the proposals in the HRA consultation document are fully progressed they would substantially weaken access and enjoyment of Convention rights.⁶ The Belfast/Good Friday Agreement (B/GFA) made provision for Convention (ECHR) rights to be incorporated into the law of Northern Ireland.⁷ If the proposed changes are implemented locally it will fundamentally alter the way in which we currently access and experience the protection of those rights. We believe that this violates both the intention behind the B/GFA commitment

⁵ Human Rights Act Reform: A Modern Bill of Rights <https://www.gov.uk/government/consultations/human-rights-act-reform-a-modern-bill-of-rights>

⁶ Our submission to the consultation sets out our concerns on the individual proposals <http://www.humanrightsconsortium.org/wp-content/uploads/2022/03/HRC-Submission-to-Human-Rights-Act-Reform-A-Modern-Bill-of-Rights-Consultation-March-2022.pdf> and our colleagues in Queens University Belfast School of Law have provided further useful analysis - https://pureadmin.qub.ac.uk/ws/portalfiles/portal/294905890/QUB_Human_Rights_Centre_Response_to_the_Ministry_of_Justice_s_Consultation_Paper_on_Human_Rights_Act_Reform_March_2022_Final_.pdf

⁷ 'The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.' Belfast (Good Friday) Agreement 1998, 'Rights, Safeguards and Equality of Opportunity', para 2. 1998

and the practical protection and enjoyment of those rights commitments as we have experienced them over the past 22 years.

We would therefore ask members to consider making the following recommendation:

- **Ensure that any possible reform of the 1998 Human Rights Act has no impact on the scope of protection or access to the remedies currently enjoyed under the European Convention on Human Rights.**
- **Ensure that any proposed changes to the Human Rights Act do not undermine the UK Governments commitments to incorporate the European Convention on Human Rights into Northern Ireland law as outlined in the Rights, Safeguards and Equality of Opportunity section of the Belfast/Good Friday Agreement 1998.**

Bill of Rights for Northern Ireland

8. Provision for a Bill of Rights for Northern Ireland, which was to build upon the rights contained within the European Convention of Human Rights (ECHR) by including supplementary rights influenced by International Standards and our local circumstances, was provided for in the Belfast/Good Friday Agreement and voted for by an overwhelming majority of people in Northern Ireland through referendum. This commitment to establishing a framework of human rights that was to run throughout government institutions was an important confidence building measure in a society that had just experienced decades of conflict. However, after almost 24 years since that peace agreement was signed the UK Government has still failed to deliver the Bill of Rights⁸ in legislation. In the third cycle review there were recommendations to the UK to progress this process.⁹
9. Despite provision of advice on the content of a Bill of Rights to the UK Government by the Northern Ireland Human Rights Commission in 2008 the Government has failed to progress this commitment and cited the lack of local political consensus as a roadblock. As part of the New Decade, New Approach agreement in 2020 that restored the Northern Ireland Assembly and Executive the Assembly Ad-Hoc Committee on a Bill of Rights was established to ‘consider the creation of a Bill of Rights’.
10. During 2020 and 2021, the Committee spent hundreds of hours hearing detailed evidence from grass roots community activists, civil society organisations, elected representatives and academic and legal experts both domestically and internationally. The vast majority of that evidence¹⁰ has clearly shown that a Bill of Rights with new strong human rights protections,

⁸ It is important to distinguish the Northern Ireland Bill of Rights process, which is rooted in our peace process and driven by broad public support, from discussions about a UK or British Bill of Rights that has been a concept largely driven by Westminster based political parties (particularly the Conservative Party) and focussed on limiting or withdrawing rights rather than strengthening them.

⁹ Recommendation 134.67 (Ireland)

¹⁰ <http://aims.niassembly.gov.uk/officialreport/minutesofevidence.aspx?&cid=1632>

including in the sphere of social and economic rights, was not just practically achievable but urgently required and of benefit across the community.

11. The Committee's own survey¹¹ published in March 2021 found that 80% of respondents across all communities were in favour of a Bill of Rights for Northern Ireland and that 82% felt it should contain a spectrum of rights reflective of international standards.
12. The Ad-Hoc Committee on a Bill of Rights process highlighted majority political support for a Bill of Rights for the first time in many years¹². Four out of the five parties (SDLP, UUP, SF & Alliance) have stated their support for a new Bill of Rights with additional rights for people in Northern Ireland. This is in parallel with the broad-based cross community support that exists at a public level – including in every main party voter base¹³. Yet the UK government continue to insist on the concept of 'political consensus' in order to progress legislation for a Bill of Rights.¹⁴ The requirement for consensus is an entirely fabricated barrier by the UK government and many of the local political parties have rightly highlighted that it has become a veto on rights progression¹⁵. We believe that Northern Ireland needs the protections of a strong Bill of Rights as much now as it has ever done, and we do not believe that the UK Government should be allowed to maintain a veto on these important commitments.

We would therefore ask members to consider making the following recommendation:

- **Ensure that a distinct Bill of Rights for Northern Ireland is developed through Westminster legislation without further delay in accordance with the Belfast /Good Friday Agreement.**

Brexit

13. Under the UK-EU Trade and Cooperation Agreement (TCA), which entered into force on 1 May 2021, the UK has committed to certain 'level playing field' provisions on domestic standards on labour rights and the environment. Non-regression clauses are breached if either side reduces worker protections below the levels in place at the end of 2020. At the

¹¹ <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/ad-hoc-bill-of-rights/written-briefings/bill-of-rights-survey-report.pdf>

¹² Four of the five main political parties in Northern Ireland support the development of a Bill of Rights as evidenced in the Ad-Hoc Committee's report.

<http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/ad-hoc-bill-of-rights/reports/report-on-a-bill-of-rights/report-of-the-ad-hoc-committee-on-a-bill-of-rights.pdf>

¹³ The Consortium, Ulster University and Queen's University jointly commissioned polling that evidenced 80%+ support from the public and across political party voters for social and economic rights in a Bill of Rights and for those same rights to be enforceable by law. <http://www.humanrightsconsortium.org/polling-shows-public-demand-strongest-rights-protections-following-covid-19/>

¹⁴ <https://www.irishnews.com/news/northernirelandnews/2022/02/17/news/headline-2590735/>

¹⁵ 'If you go with consensus, at a certain point it becomes a veto, and no party in the House should have a veto.' – Mike Nesbitt, UUP MLA speaking in the Assembly plenary debate on the Ad-Hoc Committees report. <http://data.niassembly.gov.uk/HansardXml/plenary-14-02-2022.pdf>, Pg 83.

same time, the government has stepped up plans for its deregulatory agenda, to “end the special status of EU law and ensure that it can be more easily amended or removed,” including a new ‘Brexit Freedoms’ Bill.

14. The government intends to diverge from the EU ‘strategically’ in order to give businesses a competitive advantage. The regulatory changes, typically presented as “technical” could make it easier for the government to weaken domestic standards without proper parliamentary oversight and recognition of the potential conflicts and/or unintended consequences.
15. This is of particular concern where changes are made through delegated legislation, itself at the centre of contentious political debates, not least around Brexit and Covid-19. Delegated legislation has been the principal legislative vehicle for delivering the government’s agenda on critical policy areas, including new Acts for agriculture, customs, fisheries and immigration and seems set to apply to the plans for regulatory reform, including the review of retained EU law. We are concerned that this process may be used as a vehicle to undermine or remove existing rights protections within retained EU law¹⁶.

We would therefore ask members to consider making the following recommendation:

- **Ensure that any review of retained EU law retains existing standards of protections or advances up these minimum standards rather than removing or undermining them.**

16. Another related area of concern is the extent to which standards of rights protections in Northern Ireland and the rest of the UK can maintain standards in line or equivalent to those in the EU. A number of significant EU human rights protections are maintained in Northern Ireland via the non-diminishment commitment contained in Article 2 of the Ireland-Northern Ireland Protocol.¹⁷
17. However, if an EU Directive has not been retained in UK law prior to Brexit or has not been included in Annex 1 of the Protocol, it will not be protected in NI under the Protocol, even if it might be pertinent to human rights protection in Northern Ireland (NI). This is one of the main reasons for concern that Brexit will inevitably result in the diminishment of rights in NI as EU law will develop but local legislation will not automatically keep up. This is in addition to already having lost the Charter of Fundamental Rights (CFREU) from applying in UK law after the UK Governments refusal to carry these protections over domestically.

¹⁶ Relevant recommendations were made regarding this wider issue in the third cycle review. E.g. Recommendation 6.78. ‘In the context of the withdrawal from the European Union, ensure that human rights achievements are preserved in the future framework of human rights protection in the United Kingdom and the future status of European citizens residing in the United Kingdom’ (France)

¹⁷ The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms’. Article 2.1 Protocol on Ireland/Northern Ireland , 2019

18. A further consideration is presented by the fact that the Republic of Ireland (ROI) remains a member of the EU. For example, as EU equality legislation is advanced and updated, Irish citizens and residents would be able to avail of the updated EU equality protections. The NI Protocol commits NI equality provisions to 'keep up' with EU provisions, but only those mentioned in Annex 1 and updated after 1 January 2021. Whilst this provision aims to ensure that NI equality protection standards would not fall behind those in the EU, the reality is that we do not know yet the extent to which the 'keeping up' element of the Protocol will be successful. We may see a situation where people in the ROI and NI enjoy very different standards of equality protection. There are also going to be additional existing and future EU equality provisions that will likely fall outside of a strict interpretation of the Art 2 and Annex1 protections. Such divergence in safeguards will create inequitable access to rights on the island of Ireland.

We would therefore ask members to consider making the following recommendation:

- **Ensure that equality and rights protections in Northern Ireland keep pace with emerging developments within the EU in order to help maintain comparable rights protections across the island of Ireland.**

NIHRC Funding

19. The Global Alliance of National Human Rights Institutions (GANHRI) completed its 5-year periodic review of the Northern Ireland Human Rights Commission (NIHRC) in 2021 and refused to reaccredit it with 'A' status. Instead, it has taken the unprecedented step of deferring its final decision until 2022. This decision was made because GANHRI did not believe the NIHRC would be able to continue to operate in full compliance with UN General Assembly Resolution 48/134 (Paris Principles'). Citing the inadequate funding from the United Kingdom government as the primary reason for its decision. It described the situation as "very serious and time sensitive" and "strongly recommended that an improved and sustainable position" be provided by the UK government before the end of the deferral period in 2022.

20. Under current proposals by the UK government the NIHRC budget would be reduced significantly over the next three years. To an extent that the NIHRC themselves believe that it would make their core work unsustainable. These cuts would not only jeopardise its core domestic work but also its ability to share independent assessments of the human rights situation in Northern Ireland before the UN Human Rights Council or International Human Rights Treaty Bodies.

We would therefore ask members to consider making the following recommendation:

- **Ensure adequate and sustainable funding to the Northern Ireland Human Rights Commission to a level in compliance with 'A' status of the Paris Principles and the Global Alliance of National Human Rights Institutions (GANHRI).**

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