Submission to NI Affairs Committee inquiry into the Government’s draft Northern Ireland (Miscellaneous Provisions) Bill

Introduction: Status and Functions of the Northern Ireland Human Rights Commission

1. The Northern Ireland Human Rights Commission (the Commission) is a national human rights institution (NHRI). It was created in 1999 by Parliament through the Northern Ireland Act 1998, pursuant to the Belfast (Good Friday) Agreement of 1998.

2. The Commission takes note of the proposal whereby the responsibilities of the Secretary of State for Northern Ireland relating to the Commission may be devolved to the Northern Ireland Assembly and Executive. This proposal may have implications for the Commission in the carrying out of its functions. The Commission welcomes the opportunity to advise the NI Affairs Committee with regard to this proposed aspect of the draft Northern Ireland (Miscellaneous Provisions) Bill.

3. The Commission’s powers and duties are derived from sections 69 and 70 of the Northern Ireland Act 1998 and sections 14 to 16 of the Justice and Security (Northern Ireland) Act 2007. Under the 1998 Act as amended, the Commission has the following duties:

- to keep under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights;
- to advise the Secretary of State for Northern Ireland and the Executive Committee of the Northern Ireland Assembly of legislative and other measures which ought to be taken to protect human rights;
• to advise the Northern Ireland Assembly whether proposed legislation is compatible with human rights standards;
• to promote understanding and awareness of the importance of human rights in Northern Ireland by, for example, undertaking or commissioning or otherwise assisting research and educational activities, and;
• to provide advice to the Secretary of State for Northern Ireland on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights.

4. In addition, under sections 69 and 70 of the Northern Ireland Act 1998, the Commission has the following powers:
   • to give assistance to individuals who apply to it for help in relation to proceedings involving law or practice concerning the protection of human rights;
   • to bring proceedings involving law or practice concerning the protection of human rights;
   • to conduct such investigations as it considers necessary or expedient for the purpose of exercising its other functions, and;
   • to publish its advice and the outcome of its research and investigations.

5. The Justice and Security (Northern Ireland) Act 2007 refers to the Commission at sections 14-20 inclusive, amends sections 69 and 71 of the 1998 Act and gives the Commission additional powers:
   • to institute, or intervene in, legal proceedings concerning human rights where it need not be a victim or potential victim of the unlawful act to which the proceedings relate;
   • to require a person to provide information and documents in their possession, and to give oral evidence, in respect of an investigation, and;
   • to enter a specified place of detention in Northern Ireland, in respect of an investigation.


7. The Commission is prescribed as a person, for the purposes of the Public Interest Disclosure (Northern Ireland) Order 1998, to whom
disclosures of information on matters engaging human rights may be made.

8. The Commission is accredited with ‘A’ status by the International Co-ordinating Committee of National Institutions for the Protection and Promotion of Human Rights (the ICC). This is the highest level of recognition by the United Nations. The Commission is one of the United Kingdom’s three NHRIs, all of which have ‘A’ status. This accreditation has been granted following an assessment of the Commission against the UN Principles relating to the Status of National Institutions (The Paris Principles). The Paris Principles set out criteria for assessment which include composition and guarantees of independence and pluralism; extent of mandate; adequate staffing and budget to effectively protect and promote human rights. As a result of its ‘A’ status the Commission is entitled to full participation rights in the proceedings of United Nations Human Rights Council.

**Issues which the Commission wishes to bring to the attention of the Committee**

9. The matter of whether or not the responsibilities of the Secretary of State regarding the Commission should be devolved is a political consideration. The Commission does not take a view in this regard. However any new arrangement must ensure that the Commission continues to carry out all of its functions independently of Government, in full accordance with the Paris Principles.

**The Commission advises that the Committee seek an assurance that any new arrangement will be in full accordance with the Paris Principles and will not inhibit the Commission from carrying out all of its current functions independently of Government.**

10. The Commission is under a duty to keep under review the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland. This duty extends to both devolved and non-devolved matters. The Commission must advise both the Secretary of State and the Northern Ireland Executive on measures which ought to be taken to protect human rights.
The Commission advises that the Committee seek an assurance that any new arrangement will not inhibit the Commission from reviewing the adequacy and effectiveness of law and practice relating to non-devolved matters. Furthermore provision should be made for the Commission to advise and raise matters with the Westminster Government and Parliament.

11. Should the functions currently exercised by the Secretary of State with respect to the Commission be devolved, they should be relocated to the Northern Ireland Assembly. This would be in keeping with the arrangement for the Scottish Human Rights Commission, which is accountable to the Scottish Parliament.

12. The Commission refers the Committee to the Belgrade Principles which set out the basic requirements regarding the relationship between NHRIss and Parliaments. The key requirements listed in the Principles include:

"Parliaments should ensure the financial independence of NHRIss by including in the founding law the relevant provisions."

"NHRIss should submit to Parliaments a Strategic Plan and/or an Annual Programme of activities. Parliaments should take into account the Strategic Plan and/or Annual Programme of activities submitted by the NHRI while discussing budget proposals to ensure financial independence of the institution."

"NHRIss should report directly to Parliament."

"NHRIss should submit to Parliament an annual report on activities, along with a summary of its accounts, and also report on the human rights situation in the country and on any other issue that is related to human rights."

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1 The Belgrade Principles were agreed at international expert level in February 2012, the conference organised by the Office of the High Commissioner for Human Rights and ICC was attended by experts from NIHRIs, Parliaments and Universities from ten jurisdictions including the United Kingdom.

2 Ibid
13. The Commission notes that the Joint Committee on Human Rights (JCHR) recently referred to the Belgrade Principles and queried the appropriateness of the Non-Departmental Public Body Model for NHRIs.\(^3\) In addition the Equality and Human Rights Commission has proposed a number of measures to further develop its accountability to Parliament.\(^4\)

Taking account of the above considerations the Commission advises that the Committee recommend that if provision is made for the devolution of the Secretary of State’s functions relating to the Commission it be on the basis that they are transferred to the Northern Ireland Assembly.

14. The Northern Ireland Act 1998 designates all matters relating to the Commission as excepted matters (along with matters such as defence of the realm and immigration).

Taking account of the fact that all matters relating to the Commission are excepted matters, the Commission advises the Committee to consider if there would be adequate Parliamentary scrutiny of all issues arising from a transfer of the Secretary of State’s functions relating to the Commission.

15. The Commission was established pursuant to a commitment within the Belfast (Good Friday) Agreement 1998, which was endorsed by way of a referendum.

In light of the very particular origins of the Commission and the infrastructural significance of the proposal under consideration, the Commission advises the Committee to recommend that any proposed devolution of the Secretary of State’s functions relating to the Commission be subject to public consultation.

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\(^3\) JCHR Sixth Report, "Reform of the Office of the Children’s Commissioner: draft legislation" 2012 paras 113

\(^4\) EHRC - Enterprise and Regulatory Reform Bill 2012-13 Clause 56: Amendments to the EHRC’s remit House of Lords, second reading Equality and human rights impact statement November 2012