Submission to the Northern Ireland Affairs Committee of the House of Commons on the Implementation of the Armed Forces Covenant in Northern Ireland

1. The Northern Ireland Human Rights Commission (the Commission) pursuant to Section 69 (1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights.¹ In accordance with this function the following advice is submitted to the Committee in response to its call for evidence on the Implementation of the Armed Forces Covenant in Northern Ireland (NI).

2. The Commission provides advice drawing upon the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe and United Nations (UN) systems which the United Kingdom (UK) has ratified and is therefore duty bound under international law. The relevant international treaties in this context include;

- The European Convention on Human Rights, 1950 (‘ECHR’) [UK ratification 1951];
- The International Covenant on Civil and Political Rights, 1966 (‘ICCPR’) [UK ratification 1967];
- European Social Charter, 1961 [UK ratification 1962];
- The International Covenant on Civil and Political Rights, 1966 (‘ICCPR’) [UK ratification 1976];
- The International Covenant on Economic, Social and Cultural Rights, 1966 (‘ICESCR’) [UK ratification 1976];
- The United Nations Convention on the Rights of Persons with Disabilities, 2009 (‘UNCRPD’) [UK ratification 2009]; and
- The International Labour Organisation Social Security (Minimum Standards) Convention, 1952 [UK ratification 1954].

¹ Northern Ireland Act 1998, s.69 (1).
3. In addition to these treaty standards there exists a body of ‘soft law’ developed by international human rights bodies. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context are:

- Recommendation CM/Rec (2010) 4 of the Committee of Ministers ‘Human Rights of Members of the Armed Forces’;
- OSCE Handbook on the Human Rights and Fundamental Freedoms of Armed Forces Personnel

4. The Commission notes that there are concerns regarding the implementation of the Armed Forces Covenant in NI. For example, the Ministry of Defence 2012 Annual Report on the Covenant states:

“In contrast to Scotland and Wales, it has not been possible to make the same progress in building support for and delivering the Armed Forces Covenant from within the Northern Ireland Executive. The suggestion that the Covenant could provide preferential access to cross-government services for serving and former members of the Armed Forces could be seen as running counter to their strict equalities legislation”.

5. The Commission in its submission will provide advice on the international human rights obligations which the UK Government and NI Executive are required to comply with. This submission does not advise however on the application of NI domestic equality legislation as this function is within the competence of the Equality Commission NI.

6. International human rights law requires the UK Government and NI Executive to guarantee protections to all persons on an equal basis, without direct or indirect discrimination of any kind. In particular, the Commission advises that jurisprudence of the European Court of Human Rights (ECtHR) in the case of Engel v Netherlands has made clear that:

“the Convention applies in principle to members of the armed forces and not only to civilians. It specifies in Articles 1 and 14 that ‘everyone within (the) jurisdiction’ of the contracting States is to enjoy ‘without discrimination’ the rights and freedoms [set forth within it]”.

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2 Ministry of Defence 2012 Annual Report on the Covenant
3 Engel v Netherlands, European Court of Human Rights, 8 August 1976, European Human Rights Reports, Vol. 1, 1979, p. 647
7. The Commission further advises that the ECtHR has ruled that a differential treatment of certain groups may be justified provided that it meets a legitimate aim and is proportionate. Indeed, the Court has found that a failure to make reasonable and proportionate adjustments for persons with unique circumstances may amount to discrimination. An example of this in the domestic context is the Court of Appeal judgement in the case of Burnip et. al. In this instance the Court of Appeal found housing benefit regulations to be discriminatory as they failed to make reasonable adjustments for disabled tenants who may require an additional room to accommodate a carer overnight.

10. The Commission advises that international human rights bodies have recognised the need for specific protections for armed forces personnel and have sought to enhance protections through a number of instruments. For example, the Committee of Minister’s Recommendations draw upon the right to adequate food as protected by the ICESCR, Article 11, setting out the right of members of the armed forces to decent and sufficient nutrition. Similarly, further to the right to family life as protected by the ICESCR, Article 10 and the ECHR, Article 8, the OSCE Handbook recommends that “armed forces should organize programmes for assisting families/partners in case of deployments abroad”.

11. Whilst international human rights instruments principally refer to serving members of the armed forces, a number of the standards also set out obligations with respect to veterans. For instance, the Committee of Minister’s have recommended that states put in place appropriate compensation schemes for persons leaving the armed forces due to injury as a result of service.

12. The Armed Forces Covenant relates to armed forces personnel as defined broadly, including both serving individuals and those who are no longer in service.

13. In respect of serving personnel the Covenant contains a number of obligations which reinforce existing human rights. For example, it recognises Government’s “responsibility to maintain an organisation which treats every individual fairly, with dignity and respect, and an environment which is free from bullying,

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5 Glor v Switzerland case (Application No. 13444/04, judgment 30 April 2009)
6 Burnip, Trengove, Gorry v SSWP [2012] EWCA Civ 629
8 Ministry of Defence ‘Armed Forces Covenant’ 2011 Page 6
9 Indeed in certain respects it extends to the family of service personnel
harassment and discrimination”. This recognition accords with the ICCPR, Article 7 and the ECHR, Article 3, both of which prohibit torture and inhuman or degrading treatment. Moreover, the commitment to address such incidents reflects a recommendation by the Committee of Ministers that states take “robust action .. to morally condemn any such treatment and to bring to justice and punish those responsible”.

14. The right to accommodation of an adequate standard protected by the ICESCR, Article 11, is also addressed by the Covenant as it recognises that "Where Serving personnel are entitled to publicly-provided accommodation, it should be of good quality, affordable, and suitably located”. This commitment reflects the recommendation of the Committee of Ministers that armed forces personnel’s accommodation should provide sufficient living space and be appropriately ventilated.

15. In respect of veterans, the Covenant provides protection for the right to social security, which may include a pension, and elaborates on the range of support to be made after service. This provision accords with the European Social Charter, Articles 12 and 13, and the International Labour Organisation’s Social Security (Minimum Standards) Convention, 1952. The provision also reflects the Committee of Ministers Recommendations, which require that "Retired full-time professional members of the armed forces should be granted an adequate retirement pension which allows them to live decently and participate in public, social and cultural life". The provision in the Covenant requiring additional support for those injured in service is reflective of provisions within the UNCRPD, which specifically recognise the right to social protection for persons with disabilities.

16. The Commission notes that the Covenant aims to ensure the Armed Forces community suffer “no disadvantage due to service”. It seeks to achieve this aim through taking “positive measures to enable equality of outcome with other citizens” and ensuring “special treatment for the injured and bereaved”. The two approaches are demonstrated with respect to the right to health care, which is protected by ICESCR at Article 12. The Covenant requires that serving personnel who are re-deployed throughout the UK should retain respective places on NHS waiting lists. This measure will assist in ensuring that armed forces personnel are not

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10 See Covenant Page 7
12 Ibid para 62
13 Ibid para 65
disadvantaged due to the nature of their service, ensuring equality of outcome with other citizens. On the other hand the Covenant requires that those requiring treatment for an injury emerging from their service should receive priority treatment.\textsuperscript{14}

17. As indicated at the outset the Commission will not analyse the implications of the Covenant in the context of domestic equality law. However, the Commission reiterates that international human rights law permits states to make reasonable adjustments where an objective and reasonable justification exists. In making such an assessment the implications on others must be considered. This is illustrated in the aforementioned case of Burnip \textit{et al} in which the Court of Appeal considered the potential impact on the social housing budget as it affects all tenants before reaching its decision.\textsuperscript{15}

18. The Commission advises that the Committee consider whether an objective and reasonable justification could be made for affording those injured and bereaved preferential treatment through the introduction of the special measures as set out in the Covenant. It should be noted that international human rights law, and the ECtHR in particular, affords member states a wide margin of appreciation with respect to regulation of the armed forces due to the close correlation to national security.\textsuperscript{16}

19. The Commission notes that both serving armed forces personnel and veterans who are living in Great Britain benefit from the Covenant, those living in NI do not. This raises concerns regarding the equivalency of rights protection throughout the UK, particularly with respect to those rights protected by the Human Rights Act 1998.

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\textsuperscript{14} See Covenant Page 6  \\
\textsuperscript{15} Burnip v Birmingham City Council \& Anor [2012] EWCA Civ 629 (15 May 2012)  \\
\textsuperscript{16} Smith and Grady v United Kingdom (2000) 29 EHRR 493
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