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**Northern Ireland Human Rights Commission briefing on the
proposal to repeal the United Kingdom Human Rights Act
1998 and its potential effect on the Good Friday Agreement**

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Background

In September 2014 the Home Secretary Theresa May announced at the Conservative Party annual conference that the party intended to repeal the Human Rights Act and replace it with a "British Bill of Rights".

On 3 October 2014 the Conservative Party published "Protecting Human Rights in the UK – the Conservatives' proposals for changing Britain's Human Rights Laws".

The documents set out key objectives namely

- Repeal the Human Rights Act
- Put the text of the original Convention into primary legislation
- Clarify convention rights to reflect a proper balance between rights and responsibilities
- Break the formal link between British Courts and the European Court of Human Rights
- End the ability of the European Court of Human Rights (ECtHR) to force the United Kingdom (UK) to change the law
- Prevent laws being rewritten through interpretation
- Limit the use of human rights law to the most serious cases and the reach of cases to the UK
- Amend the Ministerial Code to remove any ambiguity about the duty of ministers to follow the will of Parliament in the United Kingdom.

It also set out that the courts in the UK would no longer be required to take into account rulings from the European Court of Human Rights (ECtHR) and judgements finding violations of human rights would be treated as advisory. A Parliamentary procedure would be created to consider such judgements and would only be binding if Westminster Parliament agrees it should be treated as such. These proposals would be put to the Council of Europe and if no agreement was reached then, the UK would withdraw from the ECHR.

These proposals were reflected in the Conservative Party manifesto though no mention was made of withdrawal from the ECHR.

In the Queen's speech setting out the new government's legislative proposals it was announced that it

"will bring forward proposals for a Bill of Rights to replace the Human Rights Act. This would reform and modernise our human rights legal framework and restore common sense to the application of human rights laws. It would also protect existing rights, which are an essential part of a modern, democratic society, and better protect against abuse of the system and misuse of human rights."

It now appears that a consultation process (as yet undefined and without a timetable) will take place.

The Belfast (Good Friday) Agreement

No mention has yet been made of the implications of these proposals for the Agreement.

Annex 1 of the Agreement affirms the commitment of the parties to a number of human rights. It also confirms the UK Government's intention to incorporate into Northern Ireland the ECHR with direct access to the courts and remedies for breaches of the Convention including powers for the courts to overrule Assembly legislation on grounds of inconsistency. The incorporation was put into effect by the introduction of the Human Rights Act from 2 October 2000.

The Agreement also provided for the NI Human Rights Commission to consult and advise on the scope for defining in Westminster legislation, rights supplementary to those in the ECHR to reflect on the particular circumstances of Northern Ireland.

Analysis

The three UK national human rights institutions recently issued a joint statement to the UN Human Rights Committee of the International Covenant on Civil and Political Rights setting out the value of the Human Rights Act as 'providing essential protection to everyone in the United Kingdom enabling fundamental rights to be enforced in domestic courts...the HRA is well crafted and both reflects and is embedded in the constitutional arrangements for the UK. In particular, it maintains parliamentary sovereignty, a primary role for domestic courts in the interpretation of the ECHR and is central to arrangements for devolution in Northern Ireland, Wales and Scotland.'

Potential proposals for example, to reduce the decisions of the ECtHR to advisory opinions would have ramifications for the Good Friday Agreement. It is difficult to see how such a proposal is compatible with the ECHR. Article 46 of the ECHR provides that signatories to the Convention will abide by the final judgement of the ECtHR with the Committee of Ministers then supervising its execution. Reconciling such reform is also contrary to the commitment to incorporate the ECHR within the Belfast (Good Friday) Agreement on subsequently enacted in both the Human Rights Act and Northern Ireland Act. Moreover, the provision for a Bill of Rights supplementary to existing ECHR rights is an implicit recognition of those rights and their enforcement in practice.

The Belfast (Good Friday) Agreement was incorporated as a treaty between the UK and Ireland and lodged at the United Nations. The subsequent St Andrews Agreement 2006 reaffirmed that human rights and equality is at the heart of the new dispensation in Northern Ireland. Moreover, the Stormont House Agreement 2014 reconfirmed that any legislation on parades will have proper regard to the fundamental rights protected by the ECHR (para 19) and that appropriate steps will be taken to improve the way the legacy inquest function is conducted to comply with ECHR Article 2 requirements (para 31).

In effect, human rights protection and compliance has been a cornerstone of the Belfast (Good Friday) Agreement and subsequent agreements. Attempts to dilute the role of the ECHR and the ECtHR jurisprudence, runs counter to the Belfast (Good Friday) Agreement. The Commission believes that any legislative proposals should not undermine the commitments contained within the Belfast (Good Friday) Agreement.

A Charter of Rights for the island of Ireland

The Commission and the Irish Human Rights Commission were mandated by the Belfast (Good Friday) Agreement 1998 to consider through a joint committee 'the possibility of establishing a charter, open to signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland.'

This task was completed in June 2011 when the Commissions' together presented advice to the Governments of the UK and Ireland, the Speaker of the NI Assembly and the Ceann Comhairle of Dáil Éireann. The Speaker and Ceann Comhairle both agreed to forward the advice to political parties in their respective legislative bodies for further consideration. Since then no further communication has been received on this matter.

In its 2012 annual statement the NI Human Rights Commission noted the establishment of the North-South Parliamentary Forum and the potential for the Charter to form part of its work plan. However, in 2013 and 2014 the Commission reported that this initiative did not occur and that there was nothing to report regarding the fulfilment of this aspect of the Belfast (Good Friday) Agreement.

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