

**A Bill of Rights for Northern Ireland
Comments from the Institute of Directors Northern Ireland Division**

**NI Human Rights Commission
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1.0 Introduction

- 1.1 This paper provides a response from the Institute of Directors (IoD) to the Consultation Document (the Document) issued by the Northern Ireland Human Rights Commission in September 2001.
- 1.2 The Institute of Directors is an organisation of 55,000 individual business leaders in the private and public sectors. The Northern Ireland membership stands at around 880 members, who are drawn from the full range of industrial sectors and from businesses of all sizes. The Institute's remit is to support members in the role of directing their organisations and in making a valuable contribution to the economy and the wider community.
- 1.3 The IoD welcomes in principle the prospect of a Bill of Rights and, therefore, the publication of the document as a logical development of the Belfast (Good Friday) Agreement (the Agreement) and as part of the process of establishing a stable system of government, which commands the support of its citizens living in a democratic society, reflecting the qualities, aspirations, opportunities and responsibilities reflected in the Preamble to the document. The Institute does, however, have some concerns about the Commission's preliminary proposals, which are indicated below.

2.0 The Commission's Mandate and its General Approach (Ref. Questions 1 – 3)

- 2.1 The Institute's reading of the relevant provisions Belfast Agreement is to the effect that it intended that the core of the Bill of Rights should be the European Convention of Human Rights (ECHR), supplemented by provisions which are justifiable by 'the particular circumstances' of Northern Ireland.
- 2.2 Any Bill should reflect the principles of mutual respect for the identity and ethos of both communities, and parity of esteem. This means that the Commission should consider whether a Northern Ireland Bill of Rights would assist in resolving the matters of inter-community tension and conflict here.
- 2.3 In other respects it is not desirable - or in the best interests of Northern Ireland, its people and business - that additional rights should apply in the sense that they are unique to the province or apply here to a degree which exceeds that found in the rest of the UK and the rest of the European Union (EU).
- 2.4 Where there is a need to act in such other respects to deal with matters, which are unique to Northern Ireland or which apply here to a greater extent than they do elsewhere, action should be taken through the Northern Ireland Executive and

Assembly subject to the checks and balances which apply under the Northern Ireland Act of 1998. The powers of the Assembly and of the Executive, and the devolution of authority which the 1998 Act provided should not be over-riden or eroded by the Bill of Rights, except to the extent that the Belfast Agreement clearly envisaged. More comments on this issue are made below.

- 2.5 Thus the Institute would submit that the Commission has not correctly considered the issues in Part 1C of the Consultation Document. In particular, the Institute does not support the broader approach that the Commission has actually adopted - under which it has reflected the requests of the many people and groups that have made submissions. Part of this reflects the Institute's view that if rights are to be granted to a degree that is not being afforded in the rest of a Europe (in which the tendency is towards harmonisation in such matters), there needs to be a special justification for them.
- 2.6 The Institute recognises that there are some apparent attractions in Northern Ireland coming to be seen as leading the way. However, the creation of rights and associated safeguards and benefits also creates corresponding obligations, responsibilities, restrictions, liabilities and costs. Any change should not be undertaken lightly and without particularly well founded reasons based on special local circumstances.
- 2.7 The Institute would suggest, in fact, that the Commission could and should actively pursue the task given to it under the Agreement and, in due course, Northern Ireland could be a world leader in the issues of a rights approach to inter-community conflict issues.
- 2.8 Accordingly, the Institute would question whether in producing some 164 proposed clauses - of which, according to the Commission's Chairman (in his launch speech), no fewer than 127 are supplementary to the European Convention - the Commission has found the right balance between what might be done and what should be done.
- 2.9 The Institute suggests that the supplementary clauses should be reconsidered with a view to concentrating on those that are justified by local circumstances in the sense that is described above. The Commission should be guided by the intention in the Agreement (ref. para.4 of the Human Rights section of Strand Three) that they should "reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem."

3.0 **Equality and Non Discrimination (Part 2.4 of the Document)**

- 3.1 The IoD fully supports the principle of equality of opportunity and that this principle should be enshrined effectively in the law of Northern Ireland. However, as has been pointed out above, rights create responsibilities and obligations and in that sense can curtail as well as protect freedom. This is particularly the case in the field of discrimination, where the law impacts in practical terms on the activities of individuals and organisations at least as much as it does on those of the state. The Institute holds to the view that in general the requirements of the EU Conventions and Directives should be the norm, and that these should be exceeded only where there are particular justifying local circumstances not, in general, found elsewhere to the same degree, and where additional measures are necessary to conform to the Belfast Agreement.
- 3.2 The Institute has strong objections to proposed **clause** 4.4 which would constitute a blanket provision laying down open-ended rights against discrimination in apparently unlimited areas. It far exceeds the requirements of the Belfast Agreement or what can be justified by reference to needs in Northern Ireland compared to the rest of the UK or Europe:
- 3.2.1. The clause would give the right to 'everyone' the right to be protected against discrimination on 'any ground' which the text of the document confirms would be unlimited. This open-ended approach, which contains no reference to the resolution of grievance and hurt through negotiation and conciliation, is

neither especially justified in Northern Ireland nor wise. All choices and decisions between alternatives involve "discrimination" or "positive selection" on some ground. The proposed clause will open up endless opportunities for litigation not least in the work place where even the merit principle will be open to challenge, and where it may prove to be inadequately protected by the exceptions stipulated in proposed **clause 9**.

- 3.2.2 This blanket approach will apply equally in all these unlimited areas to both direct and indirect discrimination. This is likely to have unforeseen consequences which again will provide fertile ground for the proliferation of lengthy, expensive, troublesome and often futile litigation. The pluralistic, tolerant, mutually respecting, safe and prosperous society, which is hoped for from the Agreement, does not have to be a ceaselessly, increasingly and bitterly litigious one.
- 3.2.3 The clause should be reconsidered. It should be recast in finite and more limited terms, in which the beginning and end of its scope and effects can be more clearly identified and comprehended. In principle, it should be limited in scope to the grounds listed in Article 14 of the European Convention, which should be exceeded only where there are strong and distinctive local grounds fully consistent with the requirements of the Belfast Agreement -for example, as matters which bear on 'mutual respect for the identity and ethos of both communities and parity of esteem'.
- 3.2.3 Against the local background of inter-communal violence, the Institute could accept that "status of victim" should be accepted as a ground for protecting individuals against discrimination (**Question 12**)
- 3.3 In proposed **clauses 5&6** the **definitions of direct and indirect discrimination** are not the same as those in existing anti-discrimination legislation on race, fair employment and sex. The Institute does not necessarily object to the definitions per se but thinks it important, for the avoidance of confusion and misunderstanding and in the interests of general clarity, that legislation dealing with common fields should embody common, mutually consistent definitions.
- 3.4 It is important also, for reasons of understanding and practical effectiveness, that there should be **consistency as between the various bodies of legislation generally**. It needs to be clearly understood what legislation is to have precedence and what are to be the normal routes and procedures for achieving redress. For example in employment matters, are cases normally to be pursued through the courts under the Bill of Rights or through industrial tribunals under the equality legislation? What precedence and priority should be given to conciliation and the settlement of grievances before litigation proceeds? Is the lead authority in this field, and the one from which help or advice should be sought, to be the Human Rights Commission (viz. its powers under S.70 of the 1998 Act) or the Equality Commission?
- 3.5 The Institute does not think that these matters should be left entirely to individual preference and choice. The Bill of Rights should not permit the obviation of legislation and procedures that have been developed and given effect over a number of years, and it should not confuse the machinery through which safeguards in these very important areas are provided and can be utilised. Nor should it create a situation, (other than through the proper processes of appeal) in which, conceivably, conflicting views on identical or similar issues might be taken, and precedents set, by different authorities or judicial bodies.
- 3.6 The Institute suggests, therefore, that consideration should be given to the Bill of Rights saying much less than the Commission now proposes on equality matters and that it should simply refer and defer to the equality legislation - which is now being revised in the form of a Single Equality Bill in the light of requirements emanating from the Agreement, the 1998 Northern Ireland Act, the European Convention and relevant EU Directives.

4.0 Financial Demands and Democratic Choice

- 4.1 In certain clauses, the proposed Bill would require the State to do certain things that may imply a financial commitment. The Institute recognises that in some cases this may be a necessary corollary to the provision of a desirable right or protection. However, it should be accepted also that in laying down what amounts to financial imperatives **the Bill should not deprive the Assembly and the Executive of their ability to determine public spending priorities** in accordance with their constitutional functions and electoral mandates. In the real world of government where painfully difficult choices often have to be made between highly deserving demands, the democratically elected politicians and in particular the Northern Ireland Executive and the Northern Ireland Assembly must be free to determine priorities in accordance with what they consider best serves the interests of the public, which in turn should not be deprived of its right to determine or influence such matters through the democratic process.
- 4.2 For example, (and subject to the points made at the beginning of this paper about the direction the Commission should be taking) whilst the Institute is sympathetic to the proposal that everyone should have the right to social and civic care (proposed clause 14(d)3) and the right to adequate housing (14(e)1), and would agree that it is desirable that there should be adequate provision for assisting communication between members of different linguistic communities (13.3), it should not necessarily follow when difficult choices have to be made, that because such matters are specified in the Bill of Rights, they should be given spending priority over say road safety, the provision of safe and efficient transport, access to affordable energy or to adequate water supplies, of which the Bill makes no mention. In short, the Institute would suggest that these are not properly matters for a Northern Ireland Bill of Rights.
- 4.3 If there are provisions of this nature within the Commission's remit any Bill of Rights should contain a provision protecting the right of the Northern Ireland Assembly and Executive to determine spending priorities.

5.0 Respecting Devolution and Protecting Democratic Policy Making Rights

- 5.1 The Bill of Rights will be enacted by Westminster legislation and will lie outside the scope of the Northern Ireland Executive and Assembly. It should not be allowed to water down devolution or to restrict or to damage the ability of local people through their elected representatives to determine policy, in fields in which authority is devolved to the Northern Ireland government and legislature, by laying down edicts on matters that should properly be decided through the democratic process subject to the safeguards requiring cross-community support and so on, that the 1998 Act has already put in place.
- 5.2 The restriction of policy choice, up to a point, is an inevitable consequence of the provision of inalienable rights. It is all the more important, therefore, that the Bill should not deal with matters with which it need not deal. Certainly it should not, in effect, proscribe legitimate progressive debate and ensuing constructive action about policy issues which are of social concern and which elected representatives should decide. Nor should it protect partisan positions.
- 5.3 For example, proposed clause 11.3. requires the state to ensure the right of parents to have education and teaching for their children 'in conformity with their religious, philosophical and pedagogical convictions. ...' and to 'respect the right of parents to choose for their children education in schools with a particular religious ethos, education in integrated schools and education in Irish medium schools'. Clause 11(4) appears (the references in it are not absolutely clear) to require the state to pay for those choices through the schools funding system.
- 5.4 One effect of these clauses together appears to be to protect and to enshrine in the Bill of Rights Northern Ireland's present system of mainly segregated education albeit with a protected choice of alternatives. There are certainly those who would argue with great conviction that this position is intrinsically desirable for reasons which they strongly hold, and others who would accept it as a necessary recognition of present

day realities flowing from varying historical traditions and the existence of different communities with different cultures, perspectives and priorities.

- 5.5 Equally, however, there are those who, with corresponding legitimacy and strength of conviction, would argue that the present separating system of education is a significant factor underpinning community division and conflict and that the 'principle of mutual respect for the identity and ethos of both communities and parity of esteem.. .' would be far better served by a system of state education in which children of all denominations were educated together.
- 5.5 Whatever the rights and wrongs of these views, it is important in the interests of finding the best way forward towards a harmonious and pluralist (or integrated) society, that consideration of them continues through the democratic process and that the debate is not vitiated or rendered futile by a Bill or Rights which has already predicated the outcome.
- 5.6 The IoD suggests that clauses 11(3) & (4) should be reconsidered with a view to deleting it or at least protecting choice without setting in concrete the status quo. One approach may be to amend the provisions on funding.
- 5.7 Considerations such as those raised in points 4.1-4.3 above strengthen the Institute's conviction (see points 2.4-2.8) that the Commission should adopt the narrower interpretation of its brief for the Bill

6.0 Conclusion

- 6.1 In this submission, the institute of Directors has put forward the points about the proposed Bill of Rights which most concern the membership. No attempt has been made to answer all of the questions, which the document asks.
- 6.2 The Institute is, however, willing to provide more information if that would be useful.

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