

Human Rights Reform and Northern Ireland

Discussion of the repeal of the UK Human Rights Act has intensified following the election. The Act is a complex instrument, and there would be significant implications flowing from its repeal.

Northern Ireland has a particularly important relationship with the Human Rights Act and the European Convention on Human Rights (ECHR). The Good Friday Agreement (a key part of the Northern Irish peace process) enshrined a fundamental role for the ECHR in moderating the values of plurality and equality in the 'new' Northern Ireland.

Unpicking the terms of the Good Friday Agreement is unwise. Human rights protections were not an 'add on' to the peace processes but were a central feature of the reconciliation.

Beyond the effects upon the people of Northern Ireland, there are potential implications for the UK's relationship with Ireland. The Good Friday Agreement is (at least in part) a contract between the British and Irish states. The interests of the Republic of Ireland in human rights protections in Northern Ireland should also be respected.

Neighbourly relationship

The Good Friday Agreement is a bilateral agreement that contains a reciprocal settlement to incorporate the ECHR across the island, including direct access to the courts, access to remedies and powers of the courts to strike down Assembly legislation, directly into Northern Irish and Irish law (Ireland enacted the European Convention on Human Rights Act 2003 to fulfil its side of the agreement).

The bilateral nature of the Treaty requires the continuous implementation of the ECHR across the island. Due to this bilateralism, legislation from the Northern Ireland Assembly on human rights would fail to fulfil this aspect of the Agreement.

The UK's international standing and its relationship with Ireland could suffer if its obligations under the Good Friday Agreement were not observed.

Diplomatic courtesy and international law requires that any changes to these treaty obligations be consulted upon. Should the position of the ECHR in Northern Ireland alter without consultation, the treaty would be repudiated allowing Ireland to unilaterally alter its own position regarding the ECHR.



Tony Blair (Prime Minister of the UK) and Bertie Ahern (Taoiseach of Ireland) sign the Good Friday Agreement, 10 April 1998

'...the Human Rights Act is well crafted and both reflects and is embedded in our constitutional arrangements.'

The Chief Commissioner of the Northern Ireland Human Rights Commission

'In Northern Ireland, human rights protections are not *only* a check on governmental power, but also an informal check on the dominance of the "other side"'

Aoife O'Donoghue and Ben Warwick

Domestic Issues

The Good Friday Agreement, has important human rights-based functions. Equality and **human rights are the centrepiece of the Agreement**, with the virtues of plurality and tolerance enshrined. There are numerous safeguards within the Agreement that are expressly dependent upon the ECHR as a **shared minimum standard**. At the time of the Agreement [over 50%](#) of both communities supported the inclusion of the ECHR into domestic law. The Agreement was also put to a vote.

There are further difficulties in the scenario where the Human Rights Act was repealed in England & Wales alone. In the event that Stormont was suspended then there would be complex questions as to whether it the Human Rights Act would continue to bind Westminster in making decisions on Northern Ireland in its direct governance.



The changes could affect the following provisions of the Good Friday Agreement -

Rights, Safeguards and Equality: Paragraph 2 - 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

Paragraph 9 - The Irish Government will...bring forward measures to strengthen and underpin the constitutional protection of human rights...The measures brought forward would ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland.

Strand 1: Safeguards: (b) & (c)- (b) the European Convention on Human Rights (ECHR) and any Bill of Rights for Northern Ireland supplementing it, which neither the Assembly nor public bodies can infringe, together with a Human Rights Commission; (c) arrangements to provide that key decisions and legislation are proofed to ensure that they do not infringe the ECHR and any Bill of Rights for Northern Ireland.

Recommendations

- The people of Northern Ireland and the Irish Government should be fully consulted about any potential changes to the Human Rights Act.
- If changes are pursued to the form of human rights protections in Northern Ireland (which we would recommend against), the changes should not reduce human rights protections in substance. The permanency and consistency of rights protections in Northern Ireland is crucial.
- Consideration should be given to the potential outcomes of altering the effect of the Good Friday Agreement.
- The pluralist and consensual values of the Good Friday Agreement should be respected in reforms.
- The provision of the Good Friday Agreement allowing domestic courts to overrule Assembly legislation where it is inconsistent with the ECHR, should remain as a necessary safeguard.

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