

FRA

Thematic Legal Study on National
Human Rights Institutions and Human
Rights Organisations
UK

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Executive summary

- [1]. There are three independent public bodies that have been established to function as national human rights institutes in the UK: only one, the Northern Ireland Human Rights Commission, has been accredited as yet by the International Coordinating Committee of National Human Rights Institutions (ICC) as a NHRI, but similar accreditation may eventually follow for the newly-established Equality and Human Rights Commission and the Scottish Commission for Human Rights. The powers and functions of all three Commissions are analysed in this report.

The Northern Ireland Human Rights Commission ('NIHRC')

- [2]. The Northern Ireland Human Rights Commission (hereafter the 'NIHRC') came into existence on 1 March 1999, in compliance with a commitment made by the UK Government in the *Belfast (Good Friday) Agreement of 10 April 1998*, which established a framework for peace and reconciliation in Northern Ireland. The NIHRC's role is to promote awareness of the importance of human rights in Northern Ireland, and to review existing law. The NIHRC has also a role in investigating abuses of human rights and assisting individuals alleging breaches of their rights, as well as enforcing compliance with human rights standards through its ability to bring court proceedings in its own name. The Belfast Agreement also contained a provision that the NIHRC should advise the UK government on the possibility of drawing up a new Bill of Rights for Northern Ireland, which should 'reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience', and supplement the rights protection offered by the *European Convention on Human Rights* (ECHR).
- [3]. At present, the NIHRC has a Chief Commissioner, nine part-time commissioners, a Chief Executive and a staff of approximately twenty-one full-time staff members. Since its establishment, the NIHRC has performed its functions with considerable success. At first, the Commission faced some problems, including lack of funding (the Commission currently has a budget of approx. £1.45 million), some internal disagreement and an initial lack of focus in some of its work, discussed in a report by the Joint Committee on Human Rights of the UK Parliament (hereafter the Joint Committee on Human Rights) in 2003. However, the NIHRC has overcome many of these difficulties and has continued to perform its role in an effective manner, adopting a new strategic focus on key areas and adjusting how it carries out its role of advising on the contents of a Bill of Rights. The NIHRC has identified various priority areas in its work, including addressing the legacy of human rights violations in the past

in Northern Ireland, promoting education and dialogue, and ensuring that respect for human rights is maintained within counter-terrorism initiatives.

- [4]. The NIHRC is a non-governmental public body (NGPB). Under the *Northern Ireland Act 1998* it is accountable to the Secretary of State for Northern Ireland (the UK government minister for Northern Ireland) for how it spends its public funds. (In other words, the NIHRC exercises its powers and functions in an independent manner, but makes annual reports to the Secretary of State on how it spends its public funds, which the Secretary of State lays before the UK Parliament.) Commissioners are appointed by the Secretary of State to serve for a fixed term and funding is allocated to the NIHRC by the Secretary of State. Both the Joint Committee on Human Rights and the NIHRC itself have argued for more formal guarantees of independence to be inserted in legislation. However, by and large, the Commission is seen as an independent body and is respected as such, even in the intense and difficult atmosphere of Northern Irish politics. The composition of the Commission since its establishment has tended to reflect the differing major political/religious traditions in Northern Ireland, and a broad gender balance has been generally achieved in the appointments made by the Secretary of State.
- [5]. The NIHRC can monitor human rights violations by using its power under s. 69(8) of the *Northern Ireland Act 1998* to carry out investigations, which has been considerably strengthened by recent legislative reforms, which give the Commission the power to compel the production of evidence. The Commission has also been given the power to enter places of detention as part of conducting an investigation. The NIHRC appears to have the ability under Northern Irish public law to bring judicial review proceedings against public authorities if required, to ensure conformity with administrative law principles such as fairness and adherence to natural justice. Also, the NIHRC has recently been given the power to bring proceedings under the UK *Human Rights Act 1998* where an individual has been subject to an alleged breach of his or her rights under the ECHR.
- [6]. The NIHRC also has the power to provide assistance to individuals who have commenced, are involved or wish to commence legal cases which involve law or practice relating to the protection of human rights. The NIHRC is not required to assist all individual applicants, but decides to give assistance to particular individuals in the interests of ensuring effective enforcement of the law, or for strategic purposes. The NIHRC receives approximately 1,000 new legal inquiries every year, many of which are processed through the telephone helpline that the Commission has established. As a result, it has established an internal system for selecting which applications to support. The vast majority of the individual inquiries that reach the NIHRC every year do not proceed to a formal application for legal assistance because they are resolved after the provision of initial advice and (in most cases) some correspondence and informal negotiation.

- [7]. Experience in the UK has shown that an effective way for human rights and equality commissions to influence the development of human rights law is to intervene in legal proceedings and to give a court or tribunal the benefit of their legal expertise. The *Northern Ireland Act 1998* in establishing the NIHRC made no express provision for the Commission to have the power to intervene in ongoing legal proceedings. However, the House of Lords (the highest court in the UK legal system) confirmed in 2002 that the Commission could intervene in court proceedings to promote respect for human rights, with the consent of the relevant court: this decision is an example of good practice in the interpretation and application of the legislation governing the powers of human rights commissions.
- [8]. The NIHRC also provides advice to the UK Parliament and the UK devolved legislative bodies on human rights matters, works closely with civil society, organises regular conferences and seminars on human rights issues, and encourages UK ratification of and compliance with international human rights treaties. The Commission also produces annual reports on its work, and special reports on particular issues, along with press releases to engage media attention. These reports are published periodically as the Commission completes an inquiry or publishes research.
- [9]. Also, as part of its mandate to advise on a draft Bill of Rights for Northern Ireland, the NIHRC organised in 2007 a 'Bill of Rights Forum', which brought representatives of community groups and NGOs together with members of political parties to discuss the form and content of a Bill of Rights: this Forum has recently produced a comprehensive and detailed report, which provides the Commission with clear guidelines which it will take into account in developing its own proposals on a Bill of Rights for Northern Ireland.

The Equality and Human Rights Commission (the 'EHRC')

- [10]. The Equality and Human Rights Commission (hereafter the 'EHRC') was created by the *Equality Act 2006*, taking over the powers and functions of the three previous equality commissions – the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission – and has a wide-ranging role in promoting equality and enforcing anti-discrimination law. Also, the EHRC is the first human rights commission that exists for Britain¹, and has been given a wide-ranging mandate to promote compliance with, and understanding of, human rights in Britain. The EHRC does not deal with human rights issues that come within the competence of the Scottish

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In the following, 'Britain' refers to England, Scotland and Wales.

Commission for Human Rights: however, the EHRC does have full responsibility for equality and anti-discrimination issues in Scotland.

- [11]. The EHRC has a similar status as the NIHRC: it is a non-governmental public body, independent from the government, even though under the *Equality Act 2006* it is accountable for its public funds to the relevant Secretary of State (a Minister within the UK government). As with the NIHRC, parliamentary committees and NGOs have called for the Commission to be granted more formal guarantees of independence. When fully established, the Commission will have offices in Manchester, London, Glasgow, Birmingham, Cardiff and a co-located presence in Edinburgh, north Wales and the English regions: when all positions are full, the Commission will have a staff of approximately 550 and a budget of £70 million sterling.
- [12]. So far, the EHRC has commenced its work by intervening in a number of very significant human rights cases before the English courts, as well as developing its website and initiating an inquiry into how human rights work in Britain. The EHRC has also produced new guidance on aspects of discrimination law and has provided advice to the UK government and other public authorities on several human rights issues, as well as establishing a helpline and supporting community groups and other organisations as part of its role in promoting human rights. Some criticism has been expressed about the slow process of establishing the Commission. However, the EHRC has begun to make an impact on legal and policy debates in Britain and to establish itself as a significant presence.
- [13]. The EHRC can monitor human rights violations, as well as collect information on human rights issues in general, by using its powers to carry out inquiries into human rights and equality issues. In addition, the EHRC can carry out formal investigations as to whether specific individuals have acted unlawfully in contravention of anti-discrimination law. The EHRC can also monitor and advise on the effectiveness of equality and human rights instruments, and is obliged under the 2006 Act to monitor and produce periodic reports on progress towards achieving greater respect for human rights. As with the NIHRC, the main method used by the EHRC Commission to report its monitoring work is to publish special reports on particular issues, along with press releases to engage media attention. The EHRC also has the power to issue codes of practice, which provide guidance to employers and service providers on how to comply with specific parts of British anti-discrimination law. The EHRC publishes a regular newsletter on its website and through e-mail, which contains information on new developments and its activities, as does the NIHRC.
- [14]. The EHRC provides legal representation for individuals who allege that they have been subject to discrimination contrary to UK and European anti-discrimination legislation. However, the EHRC, unlike the NIHRC, does not have the power to provide legal representation to individuals who wish to bring

cases under human rights law which does not also involve a claim under the anti-discrimination legislation.

- [15]. The 2006 Act confers powers on the EHRC to bring proceedings in relation to discriminatory advertisements and instructions or inducement to discriminate, to take enforcement action against public authorities who fail to comply with statutory duties that have been imposed upon them to promote equality, and to enter into (and to enforce via legal action if necessary) binding agreements with other bodies who undertake to avoid discriminatory acts. The Commission is also now able to seek an injunction to prevent someone committing an unlawful discriminatory act, and has the ability to bring claims in its own name against public bodies which violate human rights law, as does the NIHRC.
- [16]. Like the NIHRC, the EHRC aims to work closely with civil society and encourage UK ratification of and compliance with international human rights treaties. The EHRC is also required to produce annual reports on its work, and special reports on particular issues, published periodically as the Commission completes an inquiry or publishes research.

The Scottish Commission for Human Rights (‘SCH R’)

- [17]. The *Scottish Commission for Human Rights Act 2006* passed by the Scottish Parliament established the Scottish Commission for Human Rights (the ‘SCH R’) to deal with human rights issues that affect the devolved (quasi-federal) administration of Scotland and to assist in developing a ‘culture’ of human rights. To ensure its full independence, the Commission is directly accountable to the Scottish Parliament, which constitutes a model of good practice as it provides strong formal guarantees of independence to the SCH R. S.2 of the *Scottish Commission for Human Rights Act 2006* provides that the general duty of the Commission ‘is, through the exercise of its functions under this Act, to promote human rights and, in particular, to encourage best practice in relation to human rights’.
- [18]. The SCH R assumed full legal powers on 1 April 2008. It has begun recruiting staff and will become fully operational in autumn 2008. The Commission is able to monitor, review and propose changes to any area of Scottish law or the policies, and can conduct inquiries into the policies or practices of Scottish public authorities. However, while the SCH R may be able to provide some basic advice to individuals seeking information on their human rights, it cannot

support individual complaints. (The EHRC has the power to support individual complaints in Scotland that involve a claim under anti-discrimination law.)