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Knowledge Exchange Seminar Series (KESS)

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The Northern Ireland Bill of Rights in the Context of Brexit

What, How and Why?

This presentation focuses on an independent funded project (Joseph Rowntree Charitable Trust) that seeks to address the issue of a Bill of Rights for Northern Ireland in the context of Brexit. A Bill of Rights for Northern Ireland remains part of the unfinished work of the Good Friday/Belfast Agreement. In response to its mandate under the Belfast/Good Friday Agreement, the Northern Ireland Human Rights Commission (NIHRC) delivered the advice on a Bill of Rights to the British Government in 2008.¹ The Northern Ireland Office's response in 2009 to the advice was quite dismissive.² Since 2009 there has been little further discussion between the parties and the government on this specific issue, although it does appear to have re-emerged in the current negotiating process.

The aim of this project is to reflect on the next steps for the Bill of Rights journey. To this end, we have published a draft model Bill of Rights based on the NIHRC's advice.³ The idea is to turn the recommendations of the Commission into something that looks like draft model legislation. There are, of course, limits to any such project. First, we decided to start with the advice of the Commission. There were many contributions to this process, however, the Commission was tasked (under the terms of the Belfast/Good Friday Agreement and the Northern Ireland Act 1998) to take this work forward. It eventually delivered its proposals, and this seemed like a good place to start. At this juncture, it is

¹ Northern Ireland Human Rights Commission, *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland* (10 December 2008).

² Northern Ireland Office, Consultation Paper, *A Bill of Rights for Northern Ireland: Next Steps* (November 2009).

³ The draft model Bill can be accessed here: https://www.ulster.ac.uk/_data/assets/pdf_file/0017/205451/Bill-of-Rights-NI-Draft-Model-Bill-June-2017.pdf

important to have a brief recap of what the Commission exactly recommended. The basic starting point is that the advice is Human Rights Act plus; the intention being to supplement the Act rather than repeal and replace it. The supplementary rights include: equality and non-discrimination; democratic rights; identity and culture; victims' rights; socio-economic rights; environmental rights; and children's rights. The Commission took the position that all these rights are capable of judicial enforcement. The Commission adopted a number of innovative recommendations, including annual reporting to the Northern Ireland Assembly and the Westminster Parliament on progress as well as the establishment of a Human Rights Committee in the Assembly and a five-year independent review. The Commission also recommended that the Bill would apply to both the Assembly and the Executive and have vertical as well as horizontal application.

Second, the Commission was divided, with two of ten commissioners dissenting from the final advice (the two dissenting commissioners represent mainstream political unionism). It is testament to the then former Chief Commissioner, Professor Monica McWilliams in ensuring the advice was delivered to the British government in December 2008. This lack of consensus is also reflected in wider society and within the political circles. One school of thought is that the NIHRC went too far in its advice and adopted a maximalist approach by including rights such as socio-economic rights. This issue arose in relation to how the phrase in the Belfast/Good Friday Agreement, namely, 'the particular circumstances of Northern Ireland', was interpreted. Those who favour a more minimalist approach tend to be from political unionism. A second school of thought rejects the view that the NIHRC exceeded its remit and state that socio-economic rights must be included as they do reflect the 'particular circumstances of Northern Ireland'.⁴ There is a third school of thought that argues that the NIHRC's advice 'didn't go far enough'.⁵ This school of thought tends to be 'neglected'⁶ and are 'often drowned out'⁷ by the first school of thought. Those voices of those who said it did not go far enough need to be heard. Third, the proposals are now dated in parts; hardly surprising for a document that was submitted nearly 10 years ago. Fourth, and occasionally forgotten, the Commission's final advice was a compromise. And finally, there is the matter of capturing the intention of the Commission's advice properly in legislation. The draft legislation thus remains work in progress, and will form one part of our project report in 2018.

⁴ A. Smith, M. McWilliams, and P. Yarnell, *Political Capacity Building: Advancing a Bill of Rights for Northern Ireland* (September 1, 2014), pp 32-33.

⁵ C. Harvey, 'Where now for the Northern Ireland Bill of Rights Process?' [UK Constitutional Law Association](http://ukconstitutionallaw.org/2011/07/28/colin-harvey-where-now-for-the-northern-ireland-bill-of-rights-process/), 28 July 2011, available at <http://ukconstitutionallaw.org/2011/07/28/colin-harvey-where-now-for-the-northern-ireland-bill-of-rights-process/>

⁶Ibid.

⁷Ibid.

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The other parts of the project include hosting events to enable people to provide feedback. For example, we held an event in Belfast on 28 June 2017. The event was well attended, with several key stakeholders such as political representatives, the NIHRC, civic society members, academics and students present throughout. At the event we launched the legislative draft of the Bill of Rights. The importance of holding such an event was highlighted where interested parties from across society could come together to push forward a Northern Ireland Bill of Rights. To allow people more time to contribute to the project and respond to the model Bill, we are planning to hold more events (one at Ulster University at the Magee campus in November and another one co-organised with the Human Rights Consortium in December in Belfast). These events will be designed so people can provide both oral and written submissions on the draft model Bill. To date, the outstanding areas that people have highlighted that need to be taken into consideration to reflect the changing circumstances (most notably Brexit) are additional rights relating to children's rights; refugee rights, including the rights of refugee and unaccompanied children; equality of citizenship and access to rights; citizenship equality; the right to vote; freedom of movement; equivalence of rights on the island of Ireland; EU citizenship rights; and EU equality protections; stronger protections on women's rights, and marriage equality.

What next?

We will take into consideration this and other feedback when we are preparing another redraft model Bill. To mark the 20 year anniversary of the Belfast/Good Friday Agreement and the ten year anniversary of the Commission's advice, we will publish a policy report which will include a redraft model Bill in October/November 2018. This report will be submitted to both governments and disseminated to the participants. Our project is one part of a general attempt to continue to safeguard against the weakening of human rights standards in Northern Ireland post Brexit. We hope that by publishing a legislative draft model Bill people will start thinking again about the Bill of Rights for Northern Ireland. We hope that it can return the debate not simply to the idea of a Bill of Rights in the abstract, but the detail of what it should contain. One of the tragedies of the Northern Irish process is precisely this absence of focused discussion on content. This is our contribution to help renew the discussion around what should be in a Bill of Rights rather than circular arguments about whether there should be one or not. In doing so, our project could assist in unlocking the current political deadlock on this issue. The Bill of Rights has joined a long list of 'parked issues' in the 'too complex and difficult box'. This seems hardly credible given the extensive references to the Bill of Rights in the Agreement. Read that document again. There would appear to be a reasonable expectation that a Bill of Rights, reflective of the Agreement's mandate, would one day appear. Our project will hopefully help to bring that day closer.

