

The Office of the First Minister and Deputy First Minister

Equality Unit
20/24 Donegall Street
BELFAST
BT1 2GP

Tel: 01232 544540 Fax: 01232 544500

Facsimile

*fax - cc - George Gray
to see.*

To: *Linda Devlin* LD12
From: TONY CANAVAN
Date: *1.2.2000*

Supplementary Message to Recipient

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Number of pages to follow: *4*.....

Already faxed

25/1/00
5:30pm.

URGENT

(CORRESPONDENCE)

Reference: COR/104/2000

Raised By: Jack Straw

Subject: THE EFFECT OF THE HUMAN RIGHTS ACT ON INVESTIGATIONS
CARRIED OUT BY DEPARTMENTS

148/11

ACTION REQUIRED

Please provide advice and a draft reply for signature by the **First and Deputy First Minister**
JOINT ISSUE .

TO BE WITH PRIVATE OFFICE NO LATER THAN 05/02/2000 - Noon

Referred To:

Date Referred:

MR T MCCUSKER
(DIRECTORATE A, OFM&DFM)

25/01/2000

Mr C. ...

27/1

Copied To For Information

fax - cc Linda Dawson

PS/Mr Nesbitt
 PS/Mr Haughey
 PS/Mr Semple
 Mr Peter May
 Mr David Lavery
 Mr T Canavan
 Mr W Haire
 Mr Brian Barrington
 Mr Hugh Logue
 Mr Colm Larkin
 Mr D Campbell
 Dr G Gudgin
 Mr D Kerr
 Mr Roy McGivern
 PS/First Minister
 PS/Deputy First Minister

David Malcolm (Private Office)

THE OFFICE OF THE FIRST MINISTER AND DEPUTY FIRST MINISTER

Parliament Buildings Tel: 028 9052 1387

IMPLEMENTATION OF THE HUMAN RIGHTS LEGISLATION IN NORTHERN IRELAND

INTRODUCTION

1. **The Human Rights Act 1998** ("the Act") will incorporate the rights and freedoms guaranteed under the European Convention on Human Rights (ECHR) into domestic law. All public authorities in the UK will be required to act compatibly with the ECHR. Judges will have to take account of the ECHR in deciding cases. The courts will have the power to strike down incompatible subordinate legislation.
2. Two key provisions of the Human Rights Act are:
 - **Section 3** – which requires primary and subordinate legislation to be read and given effect in a way which is compatible with the Convention rights. In this connection most Orders in Council will be treated as subordinate legislation, along with SRs, and could be quashed or disapplied by a court if found to be incompatible with Convention rights
 - **Section 6** – which imposes a duty on public authorities to act in a manner compatible with Convention rights. This includes public bodies in Northern Ireland.

3. The Act will come fully into force throughout the United Kingdom on 2 October 2000. However, the most significant provisions of the Act are brought into force in Northern Ireland on devolution, just as has been the case in Scotland and Wales.

4. For the first time, citizens in Northern Ireland will be able to enforce their basic human rights in our local courts, instead of having to incur the cost and delay of taking a case to the European Court of Human Rights in Strasbourg.

Individuals who consider that their Convention rights have been breached will be able to seek redress in the courts in Northern Ireland. It is worth noting that the ECHR confers rights on the citizen, but with corresponding duties on the state. This is positive in nature, not simply about avoiding breaches of rights, but about protecting the citizen from infringement of his/her rights, whether by the state or others

5. The ECHR rights are:-

- Right to life

- Prohibition of slavery and forced labour
- Right to liberty and security
- Right to a fair trial
- No punishment without law
- Right to respect for private and family life
- Freedom of thought, conscience and religion
- Freedom of expression
- Freedom of assembly and association
- Right to marry
- Prohibition of discrimination
- Right to enjoyment of these rights free from discrimination

The Northern Ireland Act 1998 and the Belfast Agreement

6. Human rights and equality issues are also central to the Belfast Agreement.
This is reflected in the Northern Ireland Act 1998 which restricts the legislative and executive competence of the Assembly, Ministers and departments to compatibility with the ECHR and European Community law. Under the Northern Ireland Act, Ministers and Northern Ireland departments have no power to do anything which is incompatible with the ECHR or Community law.
7. Two key provisions of the Northern Ireland Act 1998 are:

- **Section 6(2)(c)** which provides that the NI Assembly has no competence to make laws which are incompatible with Convention rights; and
 - **Section 24 (1)(a)** which provides that NI Ministers and Departments have no power to make subordinate legislation or to do any act which is incompatible with Convention rights,
8. The Northern Ireland Act 1998 also makes provision for the establishment of the **Northern Ireland Human Rights Commission (NIHRC)**. The NIHRC was formally established on 1 March 1999 with the appointment of Professor Brice Dickson as chief Commissioner. The Commission's functions include:-
- keeping under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights;
 - providing advice to the Secretary of State and the NI Executive Committee of legislative and other measures which ought to be taken to protect human rights;
 - advising the NI Assembly whether a Bill is compatible with human rights;
 - promoting understanding and awareness of the importance of human rights in Northern Ireland;
 - giving assistance to individuals who apply to it for help in relation to proceedings involving law or practice concerning the protection of human rights;
 - bringing proceedings involving law or practice concerning the protection of human rights, and

- conducting investigations as it considers necessary or expedient for the purpose of exercising its other functions.

Guidance for Northern Ireland Departments

9. All of this will have a very significant impact on the work of the NI departments and for Ministers in charge of departments, in terms of taking executive action, making decisions or drawing up proposals for legislation.

10. Copies of Home Office Guidance for Departments on the Human Rights Act have been circulated to all Northern Ireland Departments. A Northern Ireland version of the Guide is in preparation.

11. Each Northern Ireland Department has nominated an officer at Senior Civil Service level to drive forward the work required in preparation to implement the Act. This group will meet along with representatives of the Office of the Legislative Counsel and Departmental Solicitors to identify specific human rights issues in relation to policy and legislation formulation. Departments are also considering the compliance of existing legislation in relation to the Human Rights Act.

12. Basic awareness training for senior staff and for the Grades immediately below has already been provided. This is being progressively rolled out to

others in the senior civil service and a further 300-400 key staff at Grades 6 and 7 as well as other staff.

13. The next phase will be to provide more specific training for those staff who are directly involved. Exercises are on going with the Departmental Solicitors in identifying high risk legislation and consideration of the most appropriate way to assist and train staff to audit their current legislation for compliance and to proof future legislation at draft stage.

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LINDA

24/11/99

INTRODUCTION

The Human Rights Act 1998 ('the Act') will come fully into force throughout the United Kingdom on 2 October 2000. However, the most significant provisions of the Act are brought into force in Northern Ireland on devolution, just as has been the case in Scotland and Wales. This note provides preliminary, outline guidance on the implications of this.

The Human Rights Act will incorporate the rights and freedoms guaranteed under the European Convention on Human Rights (ECHR) into domestic law. All public authorities in the UK will be required to act compatibly with the ECHR. Judges will have to take account of the ECHR in deciding cases. The courts will have the power to strike down incompatible subordinate legislation.

Human rights and equality issues are also central to the Belfast Agreement. This is reflected in the Northern Ireland Act 1998 which restricts the legislative and executive competence of the Assembly, Ministers and departments to compatibility with the ECHR and European Community law. Under the Northern Ireland Act, Ministers and Northern Ireland departments have no power to do anything which is incompatible with the ECHR or Community law.

For the first time, citizens in Northern Ireland will be able to enforce their basic human rights in our local courts, instead of having to incur the cost and delay of

taking a case to the European Court of Human Rights in Strasbourg. Individuals who consider that their Convention rights have been breached will be able to seek redress in the courts in Northern Ireland. It is worth noting that the ECHR confers rights on the citizen, but with corresponding duties on the state. This is positive in nature, not simply about avoiding breaches of rights, but about protecting the citizen from infringement of his/her rights, whether by the state or others.

The ECHR rights are:-

- Right to life
- Prohibition of torture
- Prohibition of slavery and forced labour
- Right to liberty and security
- Right to a fair trial
- No punishment without law
- Right to respect for private and family life
- Freedom of thought, conscience and religion
- Freedom of expression
- Freedom of assembly and association
- Right to marry
- Prohibition of discrimination
- Right to enjoyment of these rights free from discrimination

One of the other key elements in the NI situation is the establishment of the Northern Ireland Human Rights Commission (NIHRC). The NIHRC was formally established under the Northern Ireland Act 1998 on 1 March 1999. The Commission's functions include:-

- keeping under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights;
- providing advice to the Secretary of State and the NI Executive Committee of legislative and other measures which ought to be taken to protect human rights;
- advising the NI Assembly whether a Bill is compatible with human rights;
- promoting understanding and awareness of the importance of human rights in Northern Ireland;
- giving assistance to individuals who apply to it for help in relation to proceedings involving law or practice concerning the protection of human rights;
- bringing proceedings involving law or practice concerning the protection of human rights, and
- conducting investigations as it considers necessary or expedient for the purpose of exercising its other functions.

All of this will have a very significant impact on the work of the NI departments and for Ministers in charge of departments, in terms of taking executive action, making decisions or drawing up proposals for legislation. This note necessarily

deals with the subject of human rights in a very superficial way. Fuller guidance is in preparation and training is also being provided across the NI civil service.

The Human Rights Act 1998

1. This Act gives further effect to the rights and freedoms guaranteed under the European Convention on Human Rights (ECHR). It brings the provisions of the ECHR into the domestic law for the first time. This means that in future people in the United Kingdom will be able to argue in UK courts that their rights have been infringed.

2. The key provisions of the Human Rights Act are:

- Section 3 – which requires primary and subordinate legislation to be read and given effect in a way which is compatible with the Convention rights. In this condition most Orders in Council will be treated as subordinate legislation, along with SFRs, and could be reviewed or quashed if it found to be incompatible with Convention rights.
- Section 4 – which imposes a duty on public authorities to act in a way not incompatible with Convention rights. This includes public bodies in Northern Ireland.

3. The Act generally comes into force on 2 October 2000 but in relation to Northern Ireland, it will have effect concerning the legislative competence of the Northern Ireland Assembly and the competence of a Northern Ireland Minister or Department from inception of legislation.

The means that certain provisions of the Northern Ireland Act 1998 which require compliance with the European Convention on Human Rights, will apply from the date of its coming into force. For example:

- Section 4(1)(a) which provides that the NI Assembly has no competence to make laws which are incompatible with Convention rights; and
- Section 24(1)(a) which provides that NI Ministers and Departments have no power to make subordinate legislation or to do any act which is incompatible with Convention rights.

4. The Northern Ireland Act 1998 also makes provision for the Northern Ireland Human Rights Commission which amongst other things may bring proceedings involving law or practice in relation to the protection of human rights. These provisions generally came into force on 1 March and 1 July 2000 except in relation to the Assembly and those come into force on 2 October 2000.

IMPLEMENTATION OF THE HUMAN RIGHTS ACT IN NORTHERN IRELAND

BACKGROUND

The Human Rights Act 1998

1. This Act gives further effect to the rights and freedoms guaranteed under the European Convention on Human Rights (ECHR). It brings the provisions of the ECHR into the domestic law for the first time. This means that in future people in the United Kingdom will be able to argue in UK courts that their rights have been infringed.
2. Two key provisions of the Human Rights Act are:
 - **Section 3** – which requires primary and subordinate legislation to be read and given effect in a way which is compatible with the Convention rights. In this connection most Orders in Council will be treated as subordinate legislation, along with SRs, and could be quashed or disapplied by a court if found to be incompatible with Convention rights
 - **Section 6** – which imposes a duty on public authorities to act in a manner compatible with Convention rights. This includes public bodies in Northern Ireland.
3. The Act generally comes into force on 2 October 2000 but, in relation to Northern Ireland, it will have effect concerning the legislative competence of the Northern Ireland Assembly and the competence of a Northern Ireland Minister or Department from inception of devolution.

This means that certain provisions of the Northern Ireland Act 1998 which impose obligations as regards the European Convention on Human Rights, have effect from the date of devolution. For example,

- **Section 6(2)(c)** which provides that the NI Assembly has no competence to make laws which are incompatible with Convention rights; and
 - **Section 24 (1)(a)** which provides that NI Ministers and Departments have no power to make subordinate legislation or to do any act which is incompatible with Convention rights,
4. The Northern Ireland Act 1999 also makes provision for the **Northern Ireland Human Rights Commission** which amongst other things may bring proceedings involving law or practice in relation to the protection of human rights. These provisions generally came into force on 1 March and 1 June 1999 except as relate directly to the Assembly and those come into force on devolution day.

Training and Guidance for Northern Ireland Departments

5. Copies of Home Office Guidance for Departments on the Human Rights Act have been circulated to all Northern Ireland Departments. A Northern Ireland version of the Guide is in preparation.
6. Each Northern Ireland Department has nominated an officer at Senior Civil Service level to drive forward the work required in preparation to implement the Act. This group will meet along with representatives of the Office of the Legislative Counsel and Departmental Solicitors to identify specific human rights issues in relation to policy and legislation formulation. Departments are also considering the compliance of existing legislation in relation to the Human Rights Act.
7. Basic awareness training for senior staff and for the Grades immediately below has already been provided. This is being progressively rolled out to others in the senior civil service and a further 300-400 key staff at Grades 6 and 7 as well as other staff.
8. The next phase will be to provide more specific training for those staff who are directly involved. Exercises are on going with the Departmental Solicitors in identifying high risk legislation and consideration of the most appropriate way to assist and train staff to audit their current legislation for compliance and to proof future legislation at draft stage.

The Northern Ireland Human Rights Commission

The Commission, set up under the Northern Ireland Act 1998, has commenced its work under Professor Brice Dickson. He and the other Commissioners are appointed by the Secretary of State. In addition to the function noted in paragraph 5 above the Commission's role is to:

- advise the Secretary of State and the Executive Committee of legislative and other measures which ought to be taken to protect human rights;
- advise the Assembly whether a Bill is compatible with human rights;
- promote understanding and awareness of human rights in Northern Ireland;
- May provide legal advice and representation and other assistance to persons applying for assistance in relation to appropriate proceedings.

1/AN
24/11/99

IMPLEMENTATION OF THE HUMAN RIGHTS ACT IN NORTHERN IRELAND

POSITION PAPER

BACKGROUND

The Human Rights Act 1998

1. This Act brings the provisions of the European Convention on Human Rights into the domestic law of the UK. This means that people in the United Kingdom can, for the first time, argue in court that their rights in many situations have been infringed. The bulk of the Act comes into force in Great Britain on 2 October 2000.
2. In Northern Ireland the commencement situation is more complex. Two main provisions are relevant:
 - **Section 3-** requires primary and subordinate legislation to be read and given effect in a way which is compatible with the Convention rights. In this connection most Orders in Council will be treated as subordinate and subject to revocation, along with SR's if found to be incompatible.
 - **Section 6-** imposes a duty on public authorities to act in a manner compatible with Convention rights, including public bodies in Northern Ireland.

These provisions will come into force on 2 October 2000.

The Northern Ireland Act 1998

3. In relation to the European Convention on Human Rights, the Act controls the competence of the Northern Ireland Assembly and Executive. Two provisions are particularly relevant:
 - **Section 6(2) (c)-** The Assembly has no competence to make laws which are incompatible with Convention rights.
 - **Section 24 (1) (a) –** Provides that NI Ministers and Departments have no power to make subordinate legislation or to do any act which is incompatible with Convention rights.

These provisions come into force on devolution day.

4. **Sections 68 to 72 and Schedule 7** make provision for the **NI Human Rights Commission** who amongst other things may bring proceedings involving law or practice in relation to the protection of human rights.

These provisions came into force on 1 March and 1 June 1999 apart from parts of sections 69(3) and section 69(4) which relate directly to the Assembly and which come into force on devolution day.

5. **Schedule 10** makes breaches of the Convention rights a devolution issue ultimately to be resolved by the Judicial Committee of the House of Lords.

This Schedule will come into force on devolution day.

6. **Schedule 14 para 1** makes provision for sections 6(2)(c), 24(1) and 71 and Schedule 10 to have effect as if the Human Rights Act 1998 was in force. These relate to the legislative competence of the Assembly. In the event of these provisions being commenced before 2000, they will have effect as if the Human Rights Act was in force.

Training and Guidance for Northern Ireland Departments

7. Copies of the Home Office Guidance for Departments on the Human Rights Act have been circulated to all Northern Ireland Departments. A Northern Ireland version of the Guide is in preparation.
8. Each Northern Ireland Department has nominated an officer at Senior Civil Service level to drive forward the work required in preparation to implement the Act. This group will meet along with representatives of the Office of the Legislative Counsel and Departmental Solicitors to identify specific human rights issues in relation to policy and legislation formulation. Departments are also considering the compliance of existing legislation in relation to the Human Rights Act.
9. Some basic awareness training for senior staff and for the Grades immediately below has already been provided. This is being progressively rolled out to others in the senior civil service and a further 300-400 key staff at Grades 6 and 7 as well as other staff.
10. The next phase will be to provide more specific training for those staff who are directly involved. Exercises are on going with the Departmental Solicitors in identifying high risk legislation and consideration of the most appropriate way to assist and train staff to audit their current legislation for compliance and to proof future legislation at draft stage.

The Northern Ireland Human Rights Commission

As noted above the Commission, set up under the Northern Ireland Act 1998, has now commenced its work under Professor Brice Dickson. He and the other Commissioners are appointed by the Secretary of State. In addition to the main function noted in para 4 the Commission:

- Shall advise the Secretary of State and the Executive Committee of legislative and other measures which ought to be taken to protect human rights;
- Shall advise the Assembly whether a Bill is compatible with human rights;
- Shall promote understanding and awareness of human rights in Northern Ireland;
- May provide legal advice and representation and other assistance to persons applying for assistance in relation to appropriate proceedings.

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