



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Consultation Paper on the Powers of the Northern Ireland
Human Rights Commission: Response of the Commission**

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights,¹ advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴

2. The Commission welcomes the opportunity to respond to this consultation paper on its powers. The issue of what powers are available to it is, of course, of fundamental importance for the future work, effectiveness, status and credibility of the Commission. The Commission considers that the consultation process represents an ideal opportunity to benefit from a wide range of views on the powers which should be available to it. These views will, it is hoped, be of assistance to the Government in moving forward with the necessary amendments to legislation. In view of the significant period of time which has passed since the issue of what additional powers the Commission should be given was first raised, it is important that this issue be resolved as soon as practicable.

¹ Northern Ireland Act 1998, (s.69 (1))

² *Ibid*, s.69 (3)

³ *Ibid*, s.69 (4)

⁴ *Ibid*, S.69 (6)

3. The Commission, in framing its response to the consultation paper, is guided by the “Paris Principles”⁵ as well as by its previous submissions to Government on this matter.⁶ In addition, the Commission is guided by the principles set out in its Mission Statement. The recommendations made by the Parliamentary Joint Committee on Human Rights (JCHR), in its report of July 2003, are also taken into consideration.⁷
4. The issue of reviewing the powers of the Commission is one that has been under discussion since its foundation. Section 69(2) of the Northern Ireland Act 1998, which established the Commission, provided that it should report on the effectiveness of its powers within two years of its creation. Such a report was duly submitted by the Commission on 1 March 2001. It recommended a number of amendments to the Northern Ireland Act 1998, focussing on strengthening the Commission’s powers of investigation and clarification of a range of incidental and ancillary powers not expressly conferred upon the Commission. A decision of the Northern Ireland High Court had held that the Commission lacked the power to intervene as a third party or *amicus curiae* in court proceedings. This led the Commission to argue that such powers should be granted to it by legislation. The final decision in this case resolved the issue, so that there is no further requirement for the Commission to seek additional powers in this regard.⁸
5. The Commission believes that this consultation paper represents a decisive step in the process of assessment of the adequacy of its powers. The issue has been ongoing since March 2001, and full consideration has been given to all of the issues involved. The Commission discussed the consultation paper at length in December 2005 and January 2006, and is in agreement with the majority of the points put forward by Government. There are, however, some recommendations which the Commission cannot support in

⁵ *Principles Relating to the Status of National Institutions* approved by the United Nations General Assembly on 20 December 1993 in Resolution 48/134.

⁶ *Review of Powers* of 1 March 2001; *Response to the UK Government’s Consultation Paper on the Review of the Powers of the Northern Ireland Human Rights Commission* of 15 August 2002; *The Commission’s Powers – A Supplementary Review* of 21 April 2004.

⁷ Report entitled *Work of the Northern Ireland Human Rights Commission* published on 15 July 2003.

⁸ *In re the Northern Ireland Human Rights Commission* [2002] UKHL 25.

their current form. The reasons for this are set out in each case below.

Production of information

6. In particular, the Commission welcomes the positive response to its recommendation 24, concerning the power to require production of information. This is a common and fundamental characteristic of any effective human rights institution or ombudsman agency, referred to in Principle C(2) of the Paris Principles, and its omission from the statute was a serious shortcoming.

Improved administrative arrangements

7. In respect of a number of recommendations, the consultation paper refers to the intention of Government to address the issue directly with the Commission. These include recommendation number 3, concerning approval of the Secretary of State for terms and conditions of employment of Commission staff which in the past has led to unnecessary delays in making appointments. The Commission looks forward to working with Government to improve co-operation in this range of issues, and would anticipate resolution through administrative arrangements established by officials. The Commission may, however, revert to recommending amendments by legislation if satisfactory procedures cannot be secured.

Legal Proceedings

8. The Commission would reiterate its previous position under recommendation 17, that in section 71(1) of the Northern Ireland Act 1998, the reference to section 69(5)(b) of the same Act should be deleted – so that the Commission will then have the power to bring proceedings in its own name and when doing so rely on Convention rights. Government is asked to reconsider its view that it is not at this time appropriate to amend the Act in this way. To await a changed legal environment in the context of a Bill of Rights before reconsidering this proposal is to defer the issue indefinitely and to limit the Commission's effectiveness in taking cases in its own name. The current version of the Equality Bill at section 31 removes the victim requirement

for Judicial Review applications from the Commission for Equality and Human Rights. Government is asked to amend Section 71(1) of the Northern Ireland Act accordingly for this Commission.

Appointments

9. Where it is proposed (in response to recommendation 1) that the Commission's concerns may be addressed by a body independent of Government, namely the Office of the Commissioner for Public Appointments (OCPA), the Commission is content to accept that approach subject to the detail of OCPA guidance reflecting, in the specific case of appointments to the Northern Ireland Human Rights Commission, the principles of section 75 of the Northern Ireland Act 1998 and the Paris Principles.

Funding

10. The Commission wishes to address the impression given in the response to recommendation 5 that the recent increase in the Commission's annual budget from £750,000 to £1,350,000 effectively resolves the issue of ensuring adequate funding for the Commission. While the increase in funding is to be welcomed, the primary concern of the Commission is the manner in which funding is secured, together with the need for adequate resources to allow the Commission to be fully effective in meeting its mandate. Ideally, the Commission should be funded by (and should report to) Parliament itself, rather than via the executive branch, in line with best practice internationally in respect of national human rights institutions and ombudsman agencies, and reflecting Principle B(2) of the Paris Principles and paragraph 43 of the 2003 JCHR report. (There are several precedents for this within the UK, notably the Parliamentary and Health Service Ombudsman and her Welsh and Scottish counterparts.) The independence of the Commission is undermined when Government involves itself too closely in decisions concerning activities to be funded. The point must also be made that when the powers of the Commission are enhanced, as envisaged in the consultation document, due consideration needs to be given to a commensurate increase in resources to enable it to use the powers effectively.

Periodic recommendations

11. In the response to recommendation 10, the consultation paper solicits views on whether the Commission should make recommendations on a range of issues from time to time or at specified points of time, and whether this should be set out in legislation. The Commission remains of the view that recommendations should be made by the Commission within a specified time frame and that this should be set out in legislation. The Commission considers that this should be done no later than three years from the date of adoption of any amendments to the Northern Ireland Act arising from this consultation. The reason for this is that the Commission believes that the present review of powers has taken far longer than was originally envisaged or necessary. It can hardly have been Parliament's intention, in requiring the Commission to make recommendations on its powers within two years, that the Government should permit itself a further five or six years to contemplate its response. A concrete obligation on Government to receive, consider and respond to recommendations made by the Commission, set out in legislation, would reduce the risk of such serious delay occurring again.

Places of detention

12. A key area of concern for the Commission is the right of access to places of detention. The lack of clarity in its powers in this area has caused much uncertainty and absorbed large amounts of the Commission's time and resources. It is very much in the interests of all concerned that this issue be resolved properly, so that the Commission can focus its limited resources on conducting proper investigations as necessary. As stated by the Parliamentary Joint Committee on Human Rights,⁹ "(c)lear and sufficient powers are a necessary condition for a Human Rights Commission to carry out its work effectively." The Committee expressed its support for the granting to the Commission of additional powers in the terms requested.

⁹ Report of 15 July 2003 cited above, at paragraph 60.

13. In the consultation paper, Government sets out a number of issues arising in the context of access to places of detention. For example, Government is concerned to ensure that there is a co-operative relationship between the Commission and other agencies with similar or analogous powers. Another concern relates to the burden on places of detention which could result from a range of agencies having access. These concerns are addressed below.
14. The Commission welcomes the willingness of Government to provide it with the power to access places of detention. There should not, however, be any limitations on the type of location to which the Commission should have access. The reason for this is that there is no limitation on the type of location where a person may be detained by a public authority. Any attempt to limit such access by defining categories of places of detention may lead to uncertainty and difficulties in the future.
15. People may not only be detained in prisons or other analogous institutions. They may be detained in hospitals, police stations, irregular migrant centres, courthouses, airports or even airplanes or vehicles (for example, in the transportation of detained persons by public agencies or contractors). The Commission does not, of course, suspect the United Kingdom Government of seeking to detain persons without scrutiny. However, in order to be able to properly investigate credible allegations of human rights abuses in detention, wherever they relate to, the Commission must have the power to visit any location. A reluctance on the part of Government to extend such powers to the Commission could be interpreted by some as an indication that it engages in, is contemplating, or condones practices that may be questionable from the point of view of compliance with national and international human rights standards. The Commission considers that granting it power to visit all places where people are detained by a public authority offers the best guarantee of ensuring the highest level of accountability and transparency, thereby serving to increase public confidence in the rule of law in Northern Ireland.
16. The Commission has developed a particular expertise in relation to the detention of children and young people, and has also researched the issue of detention of persons deemed

to be suffering from mental illness. Such persons, apart from their heightened vulnerability, are not always held in prisons. This reinforces the case for adequate powers for the Commission to access any place of detention.

17. The Commission fully appreciates the imperative that any powers of access be exercised properly, in particular with the highest regard for the rights of detainees and of staff and others who may be affected by the exercise of those powers. In all visits to places of detention carried out to date, the Commission has ensured that they are carried out in an appropriate manner. The Commission will, of course, ensure that this is the case in respect of any future visits and is happy to discuss more formal mechanisms or instruments in this regard.
18. The stated concern of Government to ensure that there is no overlap or confusion with other agencies is a valid one, and one which the Commission shares. It is in the interests of all stakeholders that finite resources are used effectively. The Commission has already concluded memoranda of understanding with a number of other agencies, regulating a range of issues. This serves to reduce the risk of duplication. These agreements will be kept under review. However, in the interests of preserving the Commission's independence and that of the other inspectorates and oversight bodies, the conclusion of these agreements should be left to the respective agencies to negotiate, rather than being imposed on them.
19. As regards the need to ensure that the powers of the Commission to have access to places of detention are exercised appropriately and proportionately, the Commission will ensure that they are exercised in this manner. Any staff taking part in such access would have to undergo detailed and appropriate training, and POCVA vetting¹⁰ when required. Particular care would be exercised in relation to visits to places of detention where women and children were held, and all visits would be preceded by a needs and risk assessment. All visits would be documented and records kept.

¹⁰ Under the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003.

20. One point raised in the consultation paper of concern to the Commission is the potential requirement for the Commission to give advance notice of any visit to a place of detention (at paragraph 55). While the Commission believes that such a requirement would not pose any problem in the majority of cases, there may be situations where it is not feasible or practicable to give such notice. Such a situation may arise in cases of particular urgency or where it is possible that evidence may be interfered with prior to the visit of the Commission. There is also a major issue of public confidence: a body that, in principle, can enter prisons at will is more likely to be seen as an effective means of protection of human rights than one that is required either to seek permission, as the Commission is at present, or to give notice. Therefore, the Commission considers that there should be no requirement on it to give notice of any visit to a place of detention, but it would endeavour to give such notice in practice.
21. The Commission would stress the need to ensure that the granting of the powers which require amendment to legislation is not further delayed unduly by the drafting process or the Parliamentary legislative schedule.

Places of detention: interim provision

22. One method of granting the Commission the powers to visit places of detention without further delay is by designating it as a preventative mechanism under Article 3 of the Optional Protocol to the Convention Against Torture, as recommended by the UN Committee Against Torture in November 2004.¹¹ This step does not require legislation, would enable the Commission to develop its capacity to exercise the functions to be covered by the eventual statutory reform, and would provide Government with an opportunity to remedy the errors and apparently inadvertent omissions in the list of some two dozen preventative mechanisms previously submitted to the United Nations.¹² Such

¹¹ *Conclusions and Recommendations of the Committee Against Torture: United Kingdom of Great Britain and Northern Ireland, Crown Dependencies and Overseas Territories* (CAT/C/CR/33/3), recommendation (m).

¹² The list supplied at the time of ratification specified for Northern Ireland eight organisations. These included two bodies that were correctly described, an NGO, an inspectorate that has no statutory role in the region, prison visiting bodies that have

designation would not, however, obviate the need for legislation setting out clearly the powers of the Commission.

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¹² *Conclusions and Recommendations of the Committee Against Torture: United Kingdom of Great Britain and Northern Ireland, Crown Dependencies and Overseas Territories* (CAT/C/CR/33/3), recommendation (m).

¹² The list supplied at the time of ratification specified for Northern Ireland eight organisations. These included two bodies that were correctly described, an NGO, an inspectorate that has no statutory role in the region, prison visiting bodies that have since been renamed, and a non-statutory appointment that has since expired; other oversight arrangements and detention facilities described have since been replaced, and at least three new agencies with clearly relevant functions have come into being.