



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

## **Simplifying Immigration Law: An Initial Consultation Response of the Northern Ireland Human Rights 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 of Northern Ireland law and practice relating to the protection of human rights,<sup>1</sup> advising on legislative and other measures which ought to be taken to protect human rights,<sup>2</sup> advising on whether a Bill is compatible with human rights<sup>3</sup> and promoting understanding and awareness of the importance of human rights in Northern Ireland.<sup>4</sup> In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Commission welcomes the opportunity to respond to the consultation by the Home Office Border and Immigration Agency (the BIA) issued in June 2007. The Commission has made a number of submissions to recent consultations on immigration matters and will restrict comments in this submission to the proposed processes of simplification.
3. The Commission's response is informed by international standards, in particular the ECHR, Article 1 of which makes it clear that ECHR rights apply to all within the jurisdiction and not just to UK citizens. Reference is also made to the

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<sup>1</sup> Northern Ireland Act 1998, s.69(1).

<sup>2</sup> *Ibid.*, s.69(3).

<sup>3</sup> *Ibid.*, s.69(4).

<sup>4</sup> *Ibid.*, s.69(6).

International Covenant on Economic, Social and Cultural Rights (ICESCR) and to non-binding principles from the International Labour Organization (ILO).

4. The Commission sees potential gains from the consolidation of legislation for many of the reasons that are outlined within the consultation document. These include the potential to reduce confusion and misinformation, make the system more user-friendly, clearer and more transparent, and improve the objectivity of the decision making process. The Commission would however stress the need to ensure that there is no regression in the protection of rights through this consolidation process.
5. In section 3 the BIA sets out a number of principles underpinning the simplification process, and requests feedback. The principles outlined are the maximisation of transparency, efficiency, clarity and predictability, plain English and public confidence. The Commission has no difficulty in endorsing those principles, but would suggest that ensuring that the rights of migrants are respected be added as a key principle.
6. In relation to the principle of public confidence we would stress the importance of migrants, their families and people in general having confidence in the fairness of the system and the decision making processes. This can only be achieved through transparent and objective decision making, responsive to individual circumstances, that respects due process including the right to appeal decisions to a competent independent body. In relation to the general public, the BIA will be aware that public opinion as regards the migration system is often heavily influenced by misinformation and racial prejudice, resulting in demands for the system to be more restrictive. There is a good deal of misinformation as regards the entitlements of migrants and the economic impact of migration. Public opinion is also influenced by racially constructed stereotypes regarding migrants and deviance. We would therefore suggest that a more effective way of increasing public confidence in the system is to challenge misperceptions and combat racial prejudice, rather than to placate it by restricting the system in a way that would adversely impact the exercise of the rights of its users.
7. The BIA asks for information on models from international practice to inform the overall simplification process. The Commission would draw attention to the existence of a broad

8. The BIA also asks:

Can we use the simplification process to help make clearer the distinction between temporary residents in the UK, those seeking settlement, those settled here with no time limit on their stay and those who go on to become British citizens? Can we make clearer their respective obligations and rights, and how these different statuses need to be earned?

There is an unsettling implication underlying these questions. There clearly will be differences in immigration status as regards matters such as leave to remain between those who have temporary and permanent residency. However, given the explicit reference to “different statuses” as regards “rights”, the Commission would stress that there can be no sliding scale, as between different categories of migrants, in relation to those rights that are defined as universal fundamental human rights; the Commission would reject any assertion that such rights need to be “earned”.

9. The fundamental rights to which the state has committed itself include matters covered by the ICESCR, such as Article 7 in relation to just and favourable working conditions, Article 9 in relation to social security and Article 2(2) in relation to non-discrimination. These are set out in the following extracts:

**Article 7**

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in

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<sup>5</sup> ILO (2006) *Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* (Geneva: ILO, [www.ilo.org/public/english/protection/migrant/download/multilat\\_fwk\\_en.pdf](http://www.ilo.org/public/english/protection/migrant/download/multilat_fwk_en.pdf)).

particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence...

**Article 9**

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

**Article 2(2)**

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

10. The Commission would remind the government that any consolidation legislation must be compliant with its existing human rights obligations. The Commission reiterates its position urging the government to adopt the leading instrument in this area, the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention, MWC). Signature and ratification of this instrument would provide a binding framework based on international standards. We take this opportunity to request from Government a detailed account of the reasons for the UK position on the MWC.

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**Northern Ireland Human Rights Commission**  
**Temple Court, 39 North Street**  
**Belfast BT1 1NA, Northern Ireland**  
**Telephone: (028) 9024 3987**  
**Textphone: (028) 9024 9066**  
**Fax: (028) 9024 7844**  
**Email: [information@nihrc.org](mailto:information@nihrc.org)**  
**Website: [www.nihrc.org](http://www.nihrc.org)**