



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Response to the Police Service of Northern Ireland's  
Equality Impact Assessment for Consultation:  
Proposals to Introduce Taser**

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. While the Commission takes this opportunity to respond to the findings of the draft Equality Impact Assessment (EQIA) on the Police Service of Northern Ireland's (PSNI) proposals to introduce Taser, the events and indeed substantial delay up to this consultation have been extremely unfortunate. Indeed, the Commission has consistently expressed grave concern at the fact that the decision to acquire and introduce Taser was made prior to this consultation exercise. Most unfortunate, was the decision made by PSNI to deploy Taser, in January 2008, after only a two-day training programme. The lack of consultation with this Commission, despite it

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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).

having a statutory duty to advise on legislative and other measures which ought to be taken to protect human rights, has also been regrettable. Indeed, the proposals to introduce Taser engage a number of human rights standards. As such, the Commission will respond to the EQIA in a way that takes account of equality considerations and human rights concerns.

3. In making its response the Commission draws particular attention to the following human rights standards:
  - The European Convention on Human Rights (ECHR) Article 2 (right to life) and Article 3 (freedom from torture and cruel, inhuman or degrading treatment).
  - The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in particular, Article 1 (meaning of torture), Article 2 (measures to prevent torture and ill-treatment) and Article 16 (prevention of cruel, inhuman or degrading treatment).
  - General Comment Number 2 of the Committee Against Torture on the implementation of Article 2, CAT.
  - The UN Convention on the Rights of the Child (CRC) in particular, Article 3 (the 'best interests' principle), Article 6 (right to life), and Article 37 (a) (prohibition of torture and cruel, inhuman, or degrading treatment).
  
4. The Commission also draws attention to the fact that since its previous response to the PSNI, a UN Treaty body has expressed concern that Taser X26 could constitute inhuman and degrading treatment in violation of Article 16, CAT and that in extreme cases, it may amount to torture in violation of Article 1, CAT.<sup>5</sup> The Commission is of the view that there is an urgent need to reassess the proposals to introduce Taser in Northern Ireland against Articles 1 and Articles 2, CAT (meaning of torture and measures to prevent torture and ill-treatment), Article 16, CAT (prevention of cruel, inhuman or degrading treatment) and Article 3, ECHR (freedom from torture and cruel, inhuman or degrading treatment). The Commission notes the development of this Committee's thinking from 2006 when it considered that the use of Taser should only be used as a "substitute for lethal weapons" to

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<sup>5</sup> Committee Against Torture (2008) *Conclusions and Recommendations of the Committee Against Torture: Portugal*, 39<sup>th</sup> Session, 2 – 23 November 2007, CAT/C/PRT/CO/4.

the more recent opinion cited above which raises further and more serious concerns about the use of Taser.<sup>6</sup>

5. As indicated in its previous response to screening on 21 November 2006, the Commission recognises that the PSNI should be equipped with alternatives to firearms, both in accordance with the Service's obligations under international human rights law, and as a consequence of the recommendations of the Patten Commission. The Commission also recognises the need to protect the lives and safety of police officers when faced with incidents where there is a threat to life or security of the person.
6. Nevertheless, for the reasons outlined below, the Commission is concerned that proposals to introduce Taser in Northern Ireland are not in accordance with international human rights obligations, nor sufficient to ensure that Taser is used only as an alternative to more lethal force.
7. The Commission refers to General Comment Number 2 of the Committee Against Torture on the implementation of Article 2, CAT. In particular, the Commission urges, in light of the Committee's 2007 observations, an assessment of whether proposals to introduce Taser are compatible with paragraph 4, which states that, "State Parties are obligated to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment; and to take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented".
8. The Commission does not disagree in principle at least with a proposal to use a less lethal weapon in circumstances where a more lethal weapon would be used. However, it is not clear from the proposals for Taser that this is what is envisaged. The specifics of the proposal state that Taser may be used "...where an officer honestly and reasonably believes that it is necessary in order to prevent a risk of death or serious injury" (p4). This 'test' does not appear to tally wholly with the overall aim and objective of the policy to introduce Taser which is stated as being "to provide a less lethal firearms capability to specialist and authorized firearms officers". The Commission believes that if Taser is intended as an alternative to more lethal options then the test for use should stipulate that this is the case. In addition, the Commission notes that Taser is a 'less lethal' not a 'non-lethal' weapon.

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<sup>6</sup> Committee Against Torture (2006) Report on the USA, CAT/C/USA/CO/2 and Committee Against Torture (2005) Report on Switzerland CAT/C/CR/34/CHE

As such, it should always be subject to the test of 'absolute necessity' as required by Article 2, ECHR. The current 'test' of 'honest and reasonable belief' is not an objective and measurable test in the same way that 'absolute necessity' is. As a further point, the Commission restates its concern that 'mission creep' may result from failure to limit Taser use solely as an alternative to more lethal force.

9. The Commission welcomes the statement that Taser will not be used as a compliance tool or in public order situations (p4). However, even with the criteria for use and the data used to inform the draft EQIA, the Commission remains unclear about the types of situations for which Taser is intended.
10. The document provides statistics on the number of violent and security related incidents involving firearms or suspected firearms, knife incidents, and threats in Northern Ireland. This is important in order to gauge the levels of violent crime in Northern Ireland. In addition, the Commission recognises that violent and security related incidents represent a very grave and serious threat to the safety of police officers and to members of the public. However, the Commission is not convinced that statistics on the number of recorded violent and security related incidents help to clarify when Taser will be used. In order to provide further clarity, it would be helpful to determine the proportion of these incidents where officers considered it necessary to use lethal or potentially lethal force (whether or not such force was actually used). This would give additional information about the potential for Taser use and an indication of whether or not there is a 'capability gap' and if so, the extent of such a gap.
11. In terms of further data to inform the EQIA and to assess the impact of Taser as an alternative to lethal force, it would be useful to include the numbers and the types of incidents where live arms have been used by PSNI at present.
12. The Commission welcomes the fact that the draft EQIA includes a summary of responses received during the pre-consultation period and also feedback from a consultation by the Northern Ireland Policing Board (NIPB). Nevertheless, it seems that the actual data used in Section 5 of the document to assess the likely impact of Taser on Section 75 groups has been drawn almost exclusively from official sources. There is no assessment of the research completed by other agencies and non-governmental organisations, for

instance, Amnesty International or The Bradford Non-Lethal Weapons Research Project, nor is there any reference to academic research or studies completed in other jurisdictions such as the United States, Canada, and New Zealand. In light of this, the Commission is concerned that the draft EQIA is not informed by a comprehensive review of relevant data.

13. Turning to the data that is reviewed, the Commission is concerned that at times this is perhaps dated or not conclusive enough to form a full opinion on the impact of Taser in Northern Ireland. For instance, the Police Scientific Development Branch (PSDP) evaluations were completed in 2002 and 2005. There is also a reference to a 2006 review of baton discharges for the period 2002 to 2004 in England and Wales. This report considers only two incidents of Taser use.
14. The Commission notes the statement that the PSDB Evaluation of Less Lethal Technologies in 2002 found no deaths “unequivocally attributable solely” to low power Taser use (p26). However, and bearing in mind the obligations contained in Article 2, ECHR (right to life), the Commission is of the view that the EQIA should include a review of deaths where Taser is not the primary cause but is a related or contributory factor. In addition, while the document states that the PSDP study found no deaths attributable solely to low power Taser use, there is no indication within the EQIA on whether or not, and to what extent, deaths have been associated with the high power Taser device.
15. In order to inform this EQIA, the document has drawn on the results from a public opinion survey completed by PricewaterhouseCoopers in England and Wales (p28). The Commission believes that public opinion is an important matter to consider when assessing the impact of any new policing measures including Taser and it therefore welcomes the inclusion of a public opinion survey. However, the Commission notes that this survey was completed in April 2004 and, as stated in the EQIA, it found that awareness about Taser was low. The survey also revealed that 81% of respondents thought Taser should be extended for reasons related to police protection and “...because of an increase in violent crime” (p28). However, research shows that violent crime has been falling in England and Wales and also in Northern Ireland.<sup>7</sup> As such, the Commission would question

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<sup>7</sup> Walker A, Kershaw C and Nicholas, S (2006) *Crime in England and Wales 2005/06* Home Office Statistical Bulletin 12/06, Home Office, London; PSNI (2008) *Crime Statistics: Recorded Crimes and Clearances by District and Area*

the significance of this public opinion survey at this time in Northern Ireland.

16. A further point related to the public opinion survey is that it does not cover Northern Ireland. The Commission is of the view that there are important differences in Northern Ireland that ought to be considered before relying on a survey from England and Wales. In terms of public perception, a highly significant difference is the fact that constabularies in Great Britain are unarmed in normal duties, whereas PSNI officers are armed. This, and the history and experiences associated with the conflict in Northern Ireland means that it is reasonable to question whether or not public opinion on proposals to introduce Taser would be the same as that in England and Wales. Therefore, the Commission would query the extent to which the results from the public opinion survey are transferable to Northern Ireland.
17. Above and beyond the issues already raised, the Commission is concerned that a number of the data sources relied upon reveal very troubling findings about Taser use. The 2005 PSDP evaluation finds a significant risk of ignition in cases where a person has been sprayed with CS or PAVA spray, and the Research Programme into Alternative Policing Approaches Towards the Management of Conflict notes that "...the biophysical and physiological basis of their [Tasers] effectiveness and safety does not appear to be well understood" (p28). Among other concerns, this suggests that there is a general lack of understanding about the full effects of Taser. It follows then that even if PSNI relies on further data, there may not be enough information available to permit a conclusive judgment about the impact of Taser.
18. In terms of the impact of Taser on different equality groups it is clear, even with limited data, that there is potential for a differential adverse impact across a number of equality groups. This includes the finding that in England people whose racial group is Black / Black British are significantly more likely to be subject to Taser than their proportion in the population; that children and persons of small stature are at greater risk from the cardiac effects of Taser currents; that there is a lack of knowledge about the effects of Taser on foetuses; and that there is potential for negative effects on persons with existing physical and mental ill-health; and for

people on medication or under the influence of alcohol or drugs.

19. The document states that the availability of information to monitor the impact of Taser on each of the equality groups is good for some groups and limited for others. However, the Commission notes again that a number of the data sources reviewed within the draft EQIA to assess the impact of Taser are inconclusive. In addition, there is in general a lack of concrete knowledge and understanding about the potential for adverse effects on vulnerable persons following Taser use. Therefore, the Commission is concerned that at this stage the level of information available to assess the full impact of Taser is limited in relation to each of the equality groups.
20. In order to further appreciate the potential for differential adverse impacts due to Taser, it would be helpful to set out the prevalence and types of medication and drug use in Northern Ireland. This should be considered alongside data on the types of substances that are most likely to increase the risk of heart complications during or following Taser use. Following on from this, research should assess these findings against the prevalence and types of medication and/or drugs consumed by persons involved in serious violent and security related incidents dealt with by PSNI.
21. The EQIA does not include any information about whether or not there is potential for psychological trauma for persons and witnesses during or following Taser use. The Commission believes that this is an essential line of inquiry in any event but that it is particularly important bearing in mind the trauma and distress associated with past events and the aftermath of the conflict in Northern Ireland. Moreover, an assessment of the short and long-term psychological manifestations of Taser is relevant to the question of whether or not the proposals meet the requirements of Article 3, ECHR (freedom from torture and cruel, inhuman and degrading treatment).
22. The Commission is extremely disappointed that the proposals do not prohibit Taser use against children and young people. The Commission suggests that there are more positive ways to respond to cases involving children and young people and that Taser is not in keeping with the best interests' principle in Article 3, CRC. In addition, the Commission reiterates the results from research which show that children are at potentially greater risk of harm from Taser. This raises

serious concern for the child's right to life under Article 2 of the ECHR and Article 6, CRC (right to life). The Commission also wishes to highlight concerns expressed by the chairperson of the Committee on the Rights of the Child, that Taser is an inhuman and degrading measure for any child and that there is a risk of serious harm due to the potential for physical and psychological suffering<sup>8</sup> (Article 3, ECHR; Article 37 (a), CRC). In light of this, the Commission does not support Taser in cases involving children and young people.

23. In terms of mitigating the potential for adverse impacts for other vulnerable persons, such as those with physical or mental ill health, older persons, pregnant women, people under the influence of alcohol or those who have taken medication or other substances, the draft EQIA suggests that training and guidance can help. However, the Commission is concerned that it will not always be possible for a police officer to determine if a person does have one or more of these vulnerabilities. In addition to this, the Commission restates its earlier point that there is a lack of knowledge about the full effects of Taser. As such, short of a ban on Taser use in these cases, it is difficult to understand how operational training and guidance can mitigate the potential for damage for these vulnerable groups. Indeed, the Human Rights Committee has stated that Taser should never be used against "vulnerable persons".<sup>9</sup>
24. In relation to the potential for Taser to have a differential adverse impact, the Commission is further concerned about the risks for persons with physical or mental ill-health in light of the findings from the 2001 Census showing that 20 per cent of people living in Northern Ireland have a "limiting long-term illness" (p. 36). Indeed, it has also been noted that there is evidence of a growth in the extent of mental ill-health in Northern Ireland from the time that the census was conducted.<sup>10</sup> It is also of note that the number of people in Northern Ireland receiving Disability Living Allowance for mental health reasons in Northern Ireland was 2.9% in 2006, three times the comparable figures for Great Britain (0.9%).<sup>11</sup> Such evidence exacerbates the Commission's

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<sup>8</sup> Professor Yanghee Lee, Chairperson of the UN Committee on the Rights of the Child, Children's Law Centre Annual Lecture 2008, Thursday 13 March 2008 at the Waterfront Hall Belfast.

<sup>9</sup> UN Human Rights Committee (2006) Report on USA (CCPR/C/USA/CO/3)

<sup>10</sup> Evidenced by the rise in prescriptions for anti-depressants being issued from 2000 -2005 in Kenway, Peter et al, (2006) *Monitoring poverty and social exclusion in Northern Ireland*, Joseph Rowntree Foundation, York, p 111.

<sup>11</sup> *Ibid.*



concerns that the experience in England and Wales of Taser acquisition and use is not, in many areas, an appropriate comparison for Northern Ireland.

25. In terms of the PSNI policy decision on whether or not to introduce Taser, the Commission believes that at present there is insufficient knowledge about the impact of Taser to support its use in Northern Ireland. The Commission is of the view that there is not enough information and research available to understand or to mitigate the adverse effects of Taser for each of the different equality groups. The Commission believes that it is absolutely necessary, before taking a decision on the introduction of Taser, to investigate whether or not there is a risk of inhuman and degrading treatment or torture as a result of the proposals for Taser in Northern Ireland. In addition, it is essential to gather further information on the potential for short and longer-term psychological effects as a result of the deployment of Taser in Northern Ireland.
26. Finally, the Commission believes that it is its duty to state that despite the introduction of Taser in Northern Ireland, the obligation still very much sits with PSNI to continue to find alternatives to firearms and other forms of less lethal force that would mitigate the concerns of this Commission and international human rights treaty monitoring bodies on Taser.

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