



Northern  
Ireland  
Office

Response to Consultation

**THE POWERS OF THE  
NORTHERN IRELAND  
HUMAN RIGHTS  
COMMISSION**

November 2006

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## Introduction

This is the Northern Ireland Office's response to the consultation process that followed the publication of our paper *The Powers of the Northern Ireland Human Rights Commission (November 2005)*. This consultation response, like the original consultation paper, has been produced by the Human Rights and Equality Unit.

This paper covers:

- the background to our consultation document;
- an overview of the powers that the Government intends to extend to the Commission; and
- a summary of the consultation responses.

In particular, this document outlines the Government's commitment to extend new powers to the Commission which will allow it to:

- rely upon European Convention rights when bringing judicial proceedings;
- access place of detention when undertaking investigations;
- compel evidence required for investigations; and
- make further recommendations to the Government regarding the effectiveness of these new powers.

## **Background**

The Northern Ireland Human Rights Commission ('the Commission') was created by the Northern Ireland Act 1998. The Act sets out the functions, remit and powers of the Commission. Section 69(2) of the Act required the Commission to make recommendations regarding its effectiveness to the Secretary of State for Northern Ireland within the first two years of its existence. The Commission was established in 1999 and submitted 25 recommendations to the Secretary of State in March 2001. In May 2002, the Government issued a consultation paper, which outlined the initial response to all of the recommendations. It concluded that for a number of the recommendations, the Commission already possessed the powers in question.

In August 2002, the Commission responded to the Government's consultation paper and in doing so determined that, following a House of Lords ruling, it was no longer necessary to argue for the express clarification of incidental powers. In April 2004, the Commission submitted a supplementary report confirming that it had withdrawn recommendations 8, 9, 12, 14, 15, 16, 18 and 19; and containing four additional recommendations.

The Government considered the developments outlined above; examined changes in other jurisdictions; and circulated a consultation paper in November 2005 which explained our thinking on the recommendations that had been made by the Commission.

The consultation process which followed has allowed a detailed exploration of the particular circumstances relating to human rights in Northern Ireland. Respondents have been able to offer their views on both the Commission's original recommendations; and also the Government's response. The Government is grateful for the consultation responses we received and for the knowledge and professional insight those responses contained.

## **Next Steps: Extending the Powers of the Commission**

1. The Government believes strongly in the importance of human rights. It underpins our vision of a modern society, based on opportunity and fairness for all. The issue of human rights is constantly developing, and in recent years the Commission has actively engaged in issues in Northern Ireland, and also with human rights institutions worldwide. The Commission is an important legacy of the Belfast Agreement. It plays a major role in the continuing protection of human rights in Northern Ireland, and we are committed to ensuring that it can carry out its duties effectively.

2. Enhanced effectiveness for the Commission is not necessarily achieved through amendments to legislation. The November 2005 paper noted that a number of issues that the Commission raised through its recommendations could be addressed through changes to the administrative arrangements that guide the relationship between the Northern Ireland Office and the Commission. In the time that has passed since the initial recommendations were made, both parties have established a memorandum of understanding and a financial memorandum. It is our intention that both of these documents should evolve, and where appropriate changes can be made to give the Commission additional flexibility, we will do so.

3. As mentioned above, a number of other recommendations that the Commission originally made were given a new perspective by a legal ruling of the House of Lords in June 2002. Following that ruling the Commission withdrew ten of its recommendations.

4. Of the issues that remained, we expressed reservations in areas where we believed that the existing legislative provisions were already sufficient. However, the Government is open to legislating where it is required. The initial conclusions that we consulted on included the proposal that we should amend the Northern Ireland Act 1998 so that the Commission would be equipped with the power to access places of detention, and compel evidence, as part of its

investigations. It is now our intention to bring forward legislation which will extend these powers.

5. Additionally, following ongoing consideration of the arguments that have been put forward by the Commission and by other consultees, we also intend to legislate to allow the Commission to rely upon the European Convention on Human Rights when bringing judicial review proceedings, allowing it to take important test cases where it would not be appropriate for a victim to do so. We are also bringing forward an additional provision which will allow the Commission to make further recommendations regarding the effectiveness of these new powers.

6. Further details of these new powers are provided below.

#### Relying on Convention Rights in Judicial Review proceedings

7. The Commission has long believed that it should be able to rely on the European Convention of Human Rights when bringing Judicial Review proceedings itself. Our consultation document responded with the Government's initial view that Convention rights were already adequately protected by allowing victims to take cases.

8. We have, however, carefully considered the arguments presented by the Commission and other consultees and we now believe that there will be value in allowing the Commission to rely on Convention Rights in certain cases. We can envisage circumstances in which it is more appropriate for the Commission to take a test case to clarify a point of law rather than relying on individual victims to do so.

9. Granting this power will not in itself create any *new* circumstances for litigation: the Commission will be empowered to bring cases only where there is already a victim, or potential victim, who would presently be able to bring a case themselves. We would not expect the Commission to bring such cases often; in

the great majority of cases, we would still expect victims to bring cases themselves. The Commission will not be awarded any damages in such cases.

### Investigations: New Powers and Safeguards

10. One issue that provoked a polarised response from consultees was our invitation for all parties to consider what form the new statutory investigatory powers should take; and what safeguards would be required to ensure that they were adhered to appropriately by all parties.

11. A number of respondents felt that there should be no extra powers for the Commission; whilst others felt that it should be able to compel evidence and access places of detention without any restrictions.

12. Having considered this issue carefully, we still intend to bring forward legislative provisions that will allow the Commission to compel evidence and to access places of detention as part of its investigations. It is also our intention that a number of safeguards should be put in place that apply to both the Commission and to public authorities. The purpose of these is not to frustrate or impede investigations, but to ensure that other considerations are also taken into account, and to ensure that those who are faced with requests for access or evidence are not able to simply ignore them.

13. We have examined developments in Great Britain, where the powers of the forthcoming Commission for Equality and Human Rights have been provided for by the Equality Act 2006. This Act contains a number of provisions that exempt information from being compelled if its release would have national security implications. Similar exemptions will be applied in Northern Ireland. We have also considered the human rights of those who might be placed in danger from the release of evidence, and will ensure that they are adequately protected.

14. In extending significant new powers to the Commission, the Government is seeking to enhance the contribution that it can make to the future protection of

human rights in Northern Ireland. We therefore intend that these new powers will assist the Commission in being forward looking. The power to compel evidence, therefore, will only be used in the investigation of contemporary and future issues. Other bodies are better placed, and specifically mandated, to investigate historic issues.

15. One of the main concerns voiced by those who were sceptical of these new powers was the impact on the operational effectiveness of those who would be subject to their use. Specifically, there was concern that these new powers would duplicate the work of other bodies, and would unnecessarily disrupt the work of places of detention.

16. We intend to legislate for a revised investigations process in which there would be a requirement for the Commission to consult on terms of reference for its investigations. This will involve the Commission forwarding a clear outline of the purpose of its investigation to all relevant parties and will therefore help establish a channel of communication between the Commission and the bodies it is investigating.

17. There will also be a responsibility for the Commission to consider the work of other public bodies in order to avoid duplication of roles. The Commission will be required to consider whether an issue had been fully investigated by another body before carrying out an investigation. This is in line with a similar statutory duty that applies to the Chief Inspector for Criminal Justice for Northern Ireland.

18. It is also our intention to allow places of detention an initial period of fourteen days to appeal against the terms of reference if they are unnecessary, unreasonable or do not meet the statutory requirements that cover this power. However, it is **not** our intention to require the Commission to provide advance notice of any visit that it wishes to carry out. We have noted the comments from consultees that such a requirement would have been perceived as severely limiting this power.

19. It is also our intention to create two new criminal offences which will provide appropriate sanctions for those who fail to comply with the Commission's new powers.

20. We are aware that there were mixed views on whether we should specify which places of detention should be able to be accessed by means of this new statutory power; or whether we should provide a more open definition that would allow the Commission to access 'any place in which a person was being detained'. The Government's view is that an open definition would present legal ambiguity and would leave the power subject to interpretation and challenge. We therefore intend to specify the categories of places of detention that can be accessed. These will include prisons; young offenders institutions; the juvenile justice centre; secure childcare accommodation; court cells; police cells; immigration holding facilities; special facilities for those detained under terrorism legislation; and special facilities for those detained under mental health legislation. It is our view that this includes all relevant places of detention. However, we intend to provide for an order making power which will allow for the list to be amended, if necessary.

#### Making further recommendations

21. In the time that has passed since the Commission made its initial recommendations, it has remained of the view that there should be an explicit statutory requirement for it to make further recommendations regarding its effectiveness. Whilst we initially concluded that this was not necessary, as the Commission is able to make recommendations to the Secretary of State at any time, a number of consultation responses did highlight the perception that previous recommendations had not been progressed quickly enough by Government. It was argued that recommendations needed to be given 'explicit statutory weight' as a result.

22. We are still of the opinion that the Commission can make further recommendations at any time. However, given that the Government is amending

the original powers of the Commission, we do believe that it is right that the Commission is formally invited to comment on the effectiveness of these new powers. It is our intention, therefore, to place an additional statutory requirement on the Commission to make recommendations regarding the effectiveness of the new powers that are extended through this legislation, no later than two years following the date of their commencement.

### Bringing Forward Legislation

23. When we launched our consultation process in November 2005, we stated that we would reconsider our initial proposals in light of the responses that we received. Our consultation document also stated that we would bring forward legislation to enact these proposals. We therefore intend to introduce legislation in the present Parliamentary session that will include provisions extending these significant new powers. The Government looks forward to the constructive debate that will accompany the passage of this legislation.

## **Annex A: Overview of Consultation Responses**

Our November 2005 consultation document on the powers of the Commission can be found at:

[http://www.nio.gov.uk/the\\_powers\\_of\\_the\\_northern\\_ireland\\_human\\_rights\\_commission.pdf](http://www.nio.gov.uk/the_powers_of_the_northern_ireland_human_rights_commission.pdf)

In response, comments were offered on many aspects of the Commission's work. The Commission itself provided a further submission which offered valuable input and pressed for a positive outcome on specific recommendations. Its input, together with other respondents, is summarised below. For ease of reference, we have used the Commission's own categorisation, which divided its recommendations into those concerning its: Independence; Resources; Reviewing Functions; Advisory Functions; Casework Functions; Promotional Functions; Investigative Functions; Incidental Functions; and Supplementary Recommendations. A full list of the recommendations is attached at annex C.

### Independence (Recommendations 1- 4)

The Commission initially recommended that there should be legislative change to enhance the independence of appointments to the Commission. There was general agreement amongst respondents that the independence of this process was vital and that there should be adequate distance from Government on this. The Commission itself offered a further response stating that it was content to accept the present process which follows the guidance set out by the independent Office of the Commissioner for Public Appointments, subject to this reflecting the principles of section 75 of the Northern Ireland Act 1998 and the UN Principles relating to the Status of National Institutions (Paris Principles).

A small number of consultees also highlighted the need for independence and impartiality in the manner in which Commissioners carry out their duties; arguing that this should be a statutory obligation.

Some respondents were content with present arrangements in which the Commission must seek approval from the Secretary of State on issues regarding the employment of staff. A number disagreed, however, believing that this impeded the independence and effectiveness of the Commission.

A number of responses argued that there should be a legislative requirement for Government to enter into a memorandum of understanding with the Commission which would guarantee its independent status as set out in the aforementioned Paris Principles. It was argued that the status of the Commission should be distinct from that of other Non-Departmental Public Bodies, and that as such, bespoke arrangements were justified.

The Commission itself noted that on a number of issues, it would be possible to work with Government to enhance the flexibility and independence with which it can manage its resources. It looked forward to examining how administrative arrangements could be enhanced to do this, but reserved the right to make recommendations for legislative change if this was not achieved.

#### Resources (Recommendations 5 – 7)

The importance of the Commission being adequately funded was highlighted by many respondents, with some criticising the fact that, as its sponsor, the Northern Ireland Office sets its budget. It was felt that this created a conflict of interest as the role of the Commission is ultimately to hold Government to account. A greater role for Parliament was suggested, with the Joint Committee on Human Rights becoming more involved in determining the financial requirements of the Commission.

The Commission itself welcomed the increased funding that it had been given but felt that the extending of new powers would require consideration of budget increases. Its primary concern was also the manner in which funding is secured and it too favoured a role for Parliament.

There was not a great deal of interest on the issue of the Commission receiving funds from external sources, subject to statutory criteria. Two opposing views were offered with one further response recommending that the financial memorandum should be subject to independent scrutiny.

Only one consultee felt that two additional full time Commissioners were required although there was agreement from others that this should be kept under review.

#### Reviewing Functions (Recommendations 8 - 10)

The Commission withdrew its initial recommendation that the statutory power to “keep under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights”, should be amended, to include ‘policy’ relating to human rights. This followed the House of Lords Ruling in 2002 on the ‘implied powers’ of the Commission, which made it unnecessary in its view, to argue for a number of express clarifications through legislation. A number of respondents disagreed with the withdrawal of this recommendation and felt that such a change would still have been beneficial.

A small number of respondents also disagreed with the Commission similarly withdrawing its recommendation regarding a statutory obligation to keep the Human Rights Act under review.

Some respondents were content that the Commission did not need a statutory power to make further recommendations regarding its effectiveness and how Government was responding to its initial recommendations. A greater number, however, voiced criticism of the perceived intransigence from Government in responding to the requirements of the Commission; and argued that a statutory power was required to ensure that recommendations were given due regard. This was echoed by the Commission itself which thought that there should also be an obligation for Government to respond accordingly to any recommendations that it might make.

### Advisory Functions (Recommendations 11 - 13)

There was a mixed response on the issue of referring all draft laws and policies for Northern Ireland to the Commission. Some felt that this would prove unworkable and would cause undue delay in the policy making process. Others felt that special procedures could be put in place and that it was important for Government to make use of the Commission's expertise.

The Commission withdrew its recommendation that it should have a statutory power to advise the Secretary of State on the desirability of the UK becoming bound by international instruments on Human Rights. A number of responses disagreed with this withdrawal, and felt that such an amendment would have added value to the Commission's role.

It was recommended that there should be an obligation in legislation for the Secretary of State and the Executive Committee of the Assembly to give due regard to the advice of the Commission. Those consultees who offered comments on this issue agreed that such an approach was necessary. It was argued that this need not inhibit the process of Government.

### Casework Functions (Recommendations 14 - 17)

Following the House of Lords ruling mentioned above, the Commission also determined that it was no longer necessary to pursue recommendations regarding its role in judicial processes. None of the consultees took any issues with the Commission's decision to withdraw these recommendations.

There were a number of more detailed responses on whether the Commission should be given the power to take cases in its own name, and when doing so rely upon the European Convention on Human Rights. Overall, there was strong support offered for the Commission's wish to be given this power. It was felt that this was necessary to allow it to operate effectively. It was also noted that there may be circumstances where victims are unable to bring cases themselves, or

might suffer further by doing so. The Commission itself repeated the view that such a power was necessary.

#### Promotional Functions (Recommendations 18 - 21)

The House of Lords ruling also led to the Commission withdrawing recommendations on its promotional functions. A small number of respondents expressed discontent with this approach and felt that the original recommendations for legislative change would have provided the required clarity on the functions of the Commission.

There was a mixed response to the issue of placing a statutory responsibility on public authorities to consult with the Commission on human rights aspects of education and training. It was noted that this could result in a huge volume of work, although a number felt that this could be managed.

#### Investigative Functions (Recommendations 22 - 24)

Consultees showed a great deal of interest on the issue of the Commission seeking the statutory power to access places where individuals are detained or cared for by a public authority, as part of its investigations. There was a polarised response on this. A number of submissions pointed towards what they viewed as an already crowded field of bodies that hold the relevant public authorities to account. There was some scepticism about the value of extending such a significant power to the Commission.

A greater number of responses agreed with the Commission being granted this power and felt that it should not be subject to any impeding safeguards. The Commission itself also stressed the importance of having the ability to carry out unannounced visits. Whilst it thought that it would be able to give notice in most cases, it also felt that a statutory requirement to do so would impede its investigations into urgent situations and might create a danger of evidence tampering.

The Commission, supported by other bodies, argued that there should also be no restriction on the type of places of detention that should be covered by a new statutory power. It was noted that detention takes place beyond traditional prison accommodation, and the Commission pointed towards its expertise on issues surrounding the detention of children and young people; and those who are deemed to be suffering from a mental illness.

There was general scepticism from respondents about the need for the Commission to be empowered to enter premises and seize articles relevant to its investigations. There was concern that it was inappropriate for the Commission to carry out a quasi-policing role. It was also argued that this power could create issues in the contamination of premises or documents, although one response felt that any issues could be addressed through appropriate safeguards and professional staffing.

The view was also put forward that the recommended power to enter premises and seize articles would be unnecessary if the Commission's recommendation on compelling evidence received a positive response. This separate issue received a detailed response from many bodies. A small number opposed extending this power, although a greater number felt that it was necessary to enhance the effectiveness of Commission investigations. It was felt by some that there needed to be adequate safeguards to protect the rights of those who were being investigated. Others felt that significant safeguards were unnecessary but that it was important to ensure that there was sufficient sanction for anyone who refused to comply with this power by withholding evidence.

#### Incidental Functions (Recommendation 25)

A small number of respondents felt that there should be an amendment to legislation to allow the Commission to carry out anything that was incidental or conducive to its statutory functions. Conversely, others felt that this was not necessary as the Commission already has this power.

## Supplementary Recommendations (Recommendations 26 - 29)

There was general agreement among consultees that there should be a statutory requirement to replace a Commissioner if they resign. There was criticism of the previous situation where the Commission was not at full strength and it was felt that such a requirement would guard against this happening again.

A small number favoured legislative change to ensure that a memorandum of understanding, including a financial memorandum, would be used to guarantee the independence of the Commission and to instruct its relationship with Government.

A small number also agreed with the Commission's concern that present legislation only allows it to assist a person who is in Northern Ireland when they commence or wish to commence legal proceedings. They also shared the Commission's view that defendants or respondents to legal proceedings might also be excluded. One respondent felt that greater clarity was needed about when the present legislation had caused a problem in the past.

The Commission's final recommendation, that it should have a statutory power to resolve any dispute through mediation, conciliation or negotiation was not commented on by many consultees. Some voiced support for the recommendation and felt that these approaches would be a useful alternative to formal proceedings. Others noted that mediation was a specialist skill, and that functions such as those suggested did not actually require changes to legislation.

## **Annex B: Responding Bodies**

Consultation responses were received from:

- Age Concern
- Alliance Party
- Amnesty International UK
- British Irish Rights Watch
- Brice Dickson
- Committee on the Administration of Justice
- Children's Law Centre
- Criminal Justice Inspection Northern Ireland
- Disability Action
- Democratic Unionist Party
- Commonwealth Human Rights Initiative
- Irish Congress of Trade Unions
- Life Sentence Review Commissioners
- Lord Chief Justice
- Northern Ireland Association for the Care and Resettlement of Offenders
- Northern Ireland Commissioner for Children and Young People
- Northern Ireland Human Rights Commission
- Northern Ireland Policing Board
- Northern Ireland Ombudsman
- Police Federation for Northern Ireland
- Prisoner Ombudsman for Northern Ireland
- Police Service of Northern Ireland
- Social Democratic and Labour Party
- Sinn Fein
- United Nations High Commissioner for Human Rights
- Ulster Unionist Party

## **Annex C: The 29 Recommendations made by the Commission**

1. In section 68(3) of the Northern Ireland Act 1998, the following underlined words should be inserted: "In making appointments under this section, the Secretary of State shall establish an independent selection process, complying with the requirements of section 75 of this Act and of the Principles Relating to the Status of National Institutions, approved by the General Assembly of the United Nations in Resolution 48/134 of 1993, and as far as practicable secure that the Commissioners, as a group, are representative of the community in Northern Ireland".

2. A new section 68(3A) should be inserted into the Northern Ireland Act 1998 which reads: "Each member of the Commission shall serve impartially and independently and shall exercise or perform his or her powers, duties and functions in good faith and without fear, favour, bias or prejudice and subject only to the law".

3. Paragraph 4(1) of Schedule 7 to the Northern Ireland Act 1998 ["The Commission may employ staff subject to the approval of the Secretary of State as to numbers and as to remuneration and other terms and conditions of employment"] should be deleted.

4. A new paragraph 12 should be inserted into Schedule 7 to the Northern Ireland Act 1998 which reads: "The Crown shall enter into a Memorandum of Understanding with the Commission in respect of all relevant matters to ensure that the Commission's status as an independent human rights commission as set out in the Principles Relating to the Status of National Institutions, approved by the General Assembly of the United Nations in Resolution 48/134 of 1993, is fully guaranteed".

5. A new section 68(3B) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission shall be provided with sufficient resources to ensure that it can carry out each of its functions effectively".

6. A new paragraph 6A should be inserted into Schedule 7 to the Northern Ireland Act 1998 which reads: "Subject to the duties imposed by section 68(3A) [impartiality and independence of Commissioners], and in order to further its activities for the promotion and protection of human rights in Northern Ireland, the Commission may from time to time apply for or accept grants from lawfully constituted bodies or raise funds through the provision of services or other lawful activities."

7. A new paragraph 2(2A) should be inserted into Schedule 7 to the Northern Ireland Act 1998 which reads: "The Chief Commissioner and two of the other Commissioners shall be appointed on a full-time basis". (The Commission does not, however, wish this recommendation to be implemented unless the necessary associated resources are made available to it for the payment of two extra full-time Commissioners.)

8. In section 69(1) of the Northern Ireland Act 1998, the following underlined word should be inserted: "The Commission shall keep under review the adequacy and effectiveness in Northern Ireland of law, policy and practice relating to the protection of human rights".

9. A new section 69(1A) should be inserted into the Northern Ireland Act 1998 which reads: "Without prejudice to subsection (1) the Commission shall keep under review the implementation in Northern Ireland of the Human Rights Act 1998 and of the Bill of Rights for Northern Ireland." (The Commission does not, however, wish this recommendation to be implemented unless the necessary associated resources are made available to it for the performance of this duty.)

10. A new section 69(2A) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission shall, before the end of the period of three years beginning with the making of the recommendations required by section 69(2), report to the Secretary of State on the extent to which the recommendations made have been implemented, make such further

recommendations for improving the Commission's effectiveness as it thinks fit and, for these purposes, obtain the assistance of independent assessors".

11. A new section 69(3A) should be inserted into the Northern Ireland Act 1998 which reads: "The Secretary of State and the Executive Committee of the Assembly shall refer to the Commission all draft laws and policies proposed for Northern Ireland as early as practicable before they are introduced to Parliament or the Assembly or made available to the general public".

12. A new section 69(3B) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission shall advise the Secretary of State on the desirability of the United Kingdom becoming bound by international instruments on human rights".

13. A new section 69(4A) should be inserted into the Northern Ireland Act 1998 which reads: "The Secretary of State and the Executive Committee of the Assembly shall have due regard to the Commission's advice".

14. In section 69(5) of the Northern Ireland Act 1998 a new paragraph (c) should be inserted which reads: "[The Commission may] give information and advice involving law, policy or practice relating to the protection of human rights".

15. In section 69(5) of the Northern Ireland Act 1998 a new paragraph (d) should be inserted which reads "[The Commission may] intervene as a third party on any matter or in any proceedings in any court, tribunal, inquest, hearing or adjudicative process involving law, policy or practice relating to the promotion or protection of human rights in Northern Ireland and the persons conducting the court, tribunal, inquest, hearing or adjudicative process shall have due regard to the points made by the Commission in its intervention".

16. In section 69(5) of the Northern Ireland Act 1998 a new paragraph (e) should be inserted which reads "[The Commission may] appear as *amicus*

*curiae* on any matter or in any proceedings in any court, tribunal, inquest, hearing or adjudicative process involving law, policy or practice relating to the promotion or protection of human rights in Northern Ireland and the persons conducting the court, tribunal, inquest, hearing or adjudicative process shall have due regard to the points made by the Commission as *amicus curiae*".

17. 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.

18. A new section 69(6A) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission may express an opinion, as far as the position in Northern Ireland is concerned, on the reports which the United Kingdom is required to submit to United Nations bodies and committees, and to regional institutions, pursuant to its treaty obligations".

19. A new section 69(6B) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission may consult with, and attend the meetings of, such national or international bodies or agencies having a knowledge or expertise in the field of human rights as it thinks fit".

20. A new section 69(6C) should be inserted into the Northern Ireland Act 1998 which reads: "Statutory authorities with responsibility for education or training in Northern Ireland shall consult with the Commission when determining or reviewing the human rights aspects of the content or delivery of education (including the Northern Ireland Curriculum) or training".

21. A new section 69(6D) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission shall monitor the content and delivery of the Northern Ireland Curriculum from the point of view of the promotion and protection of human rights". (The Commission does not, however, wish this recommendation to be implemented unless the necessary associated resources are made available to it for the performance of this duty.)

22. A new section 69(8A) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission shall, in order to assure itself that human rights are being protected or to investigate any alleged violation of human rights, have access to all places of detention in Northern Ireland and to all places where persons are in the care of a public authority or of a person or body exercising functions of a public nature".

23. A new section 69(8B) should be inserted into the Northern Ireland Act 1998 which reads: "For the purposes of conducting investigations under section 69(8), the Commission may apply *ex parte* to a magistrate for a warrant to authorise the Commission, subject to strict safeguards protecting the Convention rights of all persons in those premises, (a) to enter and search premises if it reasonably believes that a human rights violation has occurred or is occurring there and (b) to remove any article discovered in those premises if it reasonably believes that the article provides evidence of a violation of human rights".

24. A new section 69(8C) should be inserted into the Northern Ireland Act 1998 which reads: "For the purposes of conducting investigations under section 69(8), the Commission may require a person whom the Commission reasonably believes to be in possession or control of any information, document or thing that is relevant to an investigation being conducted by the Commission, (a) to furnish that information, document or thing to the Commission and (b), where appropriate, to attend before the Commission to answer fully and truthfully any question put to him or her by the Commission (other than a question the answer to which might incriminate the person) and (c), if so requested by the Commission, to sign a declaration of the truth of his or her answers to any questions put to him or her under paragraph (b)".

25. A new section 69(10A) should be inserted into the Northern Ireland Act 1998 which reads: "The Commission may do anything incidental or conducive to the performance of the functions set out in this section".

26. To guard against improper interference in the Commission's work an additional provision should be inserted into the Northern Ireland Act 1998 (section 68(3B)) to read as follows: "When a Commissioner resigns from the Commission the Secretary of State shall as soon as practicable secure that the vacancy is filled by one or more new Commissioners selected in accordance with sub-section (3) above."

27. A further provision should be inserted into the Northern Ireland Act 1998 (section 68(3C)) to read as follows: "The independence of the Northern Ireland Human Rights Commission from the Government is guaranteed and the relationship between the Commission and the Government shall be regulated by a Memorandum of Understanding, including a Financial Memorandum, which shall be annually reviewed."

28. Section 70(1) should be repealed and replaced with the following sub-section: "This section applies to –  
proceedings involving law or practice relating to the protection of human rights in Northern Ireland which a person has commenced, or wishes to commence;  
or  
other proceedings in the course of which a person relies or wishes to rely on law or practice relating to the protection of human rights in Northern Ireland."

29. In section 69(5) of the Northern Ireland Act 1998 a new paragraph (c) should be inserted to read as below:

"(5) The Commission may –

- a) give assistance to individuals in accordance with section 70;
- b) bring proceedings involving law or practice relating to the protection of human rights; and
- c) resolve any dispute by mediation, conciliation or negotiation."

## **Annex D: Equality**

All designated public authorities in Northern Ireland are required to comply with the statutory equality duty, set out in section 75 of the Northern Ireland Act 1998, which requires them, in carrying out their functions to *'have due regard to the need to promote equality of opportunity -*

- (a) between persons of different religious beliefs, political opinion, racial group, age, marital status or orientation;*
- (b) between men and women more generally;*
- (c) between persons with a disability and persons without; and*
- (d) between persons with dependants and persons without.'*

In addition and without prejudice to the above duty, public authorities are required to *'have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.'*

The proposals in this paper are intended to provide the Commission with the right powers to enable it to carry out its duties effectively. The Northern Ireland Office has conducted an Equality Screening Assessment on these proposals. The screening is designed to indicate whether there is any likelihood that a policy will have a significant differential impact on any of the section 75 categories.

In the November 2005 consultation paper we stated that our initial assessment was that there were no significant differential impacts. The powers which the Government are planning will not themselves impact on groups within the section 75 categories. Any impact will come from the manner in which the Commission decides to use these new powers. This will be a matter for the Commission to assess as part of its own section 75 duty.

We received one consultation response to this assessment, which stated that the Government's plan not to legislate for the Commission's recommendations 1 and 2, might cause an adverse impact for one section 75

group. The Government has considered this view carefully, but has judged that the decision on these two recommendations do not, of themselves adversely impact on any section 75 group. An impact assessment of the Government's policy is therefore not recommended.

## **Annex E: Regulatory Impact Assessment**

A Regulatory Impact Assessment is a framework for analysis of the likely impacts of a policy change and the range of options for implementing it. An assessment has been carried out on the proposals contained within this paper. This indicates that these proposals are likely to have a low regulatory impact. The assessment is set out below.

### **1. Title**

The powers of the Northern Ireland Human Rights Commission.

### **2. Purpose and intended effect**

Objective - The Government's aim, in response to the recommendations of the Commission and other consultees, is to bring forward legislation which will ensure that the Commission has the right powers to enable it to carry out its duties effectively.

Background - The Northern Ireland Human Rights Commission was established by the Northern Ireland Act 1998. Section 69 (2) of the Northern Ireland Act 1998 provides that the Northern Ireland Human Rights Commission shall, before the end of the two years beginning with the commencement of the section, make to the Secretary of State such recommendations as it thinks fit for improving – (a) its effectiveness; (b) the adequacy and effectiveness of the functions conferred on it by this Part; and (c) the adequacy and effectiveness of the provisions of this Part relating to it.

The Commission submitted its recommendations in 2001 and in May 2002 the Government issued a consultation paper on its initial response to the recommendations. The Commission in turn responded to this paper in August 2002. It submitted a supplementary set of recommendations in April 2004.

The Government then consulted on the revised list of recommendations in November 2005. We have some revisions to our policy proposals, as outlined

in this paper, and will now move to enact these in legislation in the present parliamentary session. This policy only covers Northern Ireland.

Rationale for government intervention - The Commission has recommended that it needs additional powers to carry out its functions effectively. If the Government does not intervene and propose new legislative powers then the Commission's powers would remain the same as they currently are.

### **3. Consultation**

In May 2002, the Northern Ireland Office carried out a three month public consultation on its initial response to the Commission's recommendations. A further consultation process was undertaken in November 2005 in light of revised recommendations from the Commission, and in light of a number of other developments. The NIO has also consulted widely across Government.

### **4. Options**

Three options have been considered for dealing with these issues:

Option 1 - to do nothing. The Northern Ireland Human Rights Commission would continue to operate the functions granted to it under the Northern Ireland Act 1998.

Option 2 – respond to the Commission's recommendations by agreeing to make administrative changes only. This option would provide the Commission with some means with which to improve its efficiency. Whilst the Government would seek to make any appropriate administrative changes, it would not propose any legislative changes to increase the Commission's powers.

Option 3 - to bring forward legislation that would extend additional statutory powers to the Commission.

### **5. Costs and benefits**

Sectors and groups affected - there are no specific sectors affected by this policy. Any additional powers granted to the Northern Ireland Human Rights Commission will be applicable to all sectors and groups within Northern Ireland.

Benefits - the scope of the policy means that there are no economic or environmental benefits. However, in terms of social benefits, our legislation will provide the Commission with additional powers to promote and protect human rights in Northern Ireland.

Costs - the scope of the policy means that there are no environmental or social costs. The changes proposed will grant the Commission additional powers. However, these powers are designed to allow the Commission to carry out its existing duties more effectively. The powers should not, therefore realise additional costs.

#### **6. Small Firms Impact Test**

This policy will not have any direct statutory effect on business. Accordingly, there are no direct compliance requirements.

#### **7. Competition assessment**

Due to the nature of the powers proposed, this policy will not have an effect on competition.

#### **8. Enforcement, sanctions and monitoring**

These proposed legislative changes will create new criminal offences which will provide sanction against individuals or public authorities failing to respond appropriately to the Commission's new statutory powers.