

CAJ's submission no. S406

CAJ's Written Evidence to the Northern Ireland Affairs Committee on its inquiry into the 'Draft Northern Ireland (Miscellaneous Provisions) Bill (2013)

March 2013

About CAJ

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

**Written Evidence to the Northern Ireland Affairs Committee on its inquiry
into the 'Draft Northern Ireland (Miscellaneous Provisions) Bill (2013)**

Committee on the Administration of Justice ('CAJ')

1. CAJ is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.
2. CAJ welcomes the opportunity to provide Written Evidence to the Committee on its inquiry into the Draft Northern Ireland (Miscellaneous Provisions) Bill, which was published in February 2013 (Cm8563). CAJ would like to raise the following issues:
 - Clarity on the proposal to grant the Secretary of State powers to 'part designate' public authorities for the purposes of the statutory equality duty found in s75 of the Northern Ireland Act 1998;
 - The proposal to empower the use of secondary legislation to change the status of a key Belfast/Good Friday Agreement institution– the Northern Ireland Human Rights Commission;
 - Consideration of using the bill to amend the Public Processions Act 1998 to bring the framework for decision making on parades restriction more explicitly into line with a framework based around provisions of the European Convention on Human Rights (ECHR);

Part designation of public authorities under statutory equality duty

3. An important safeguard provided for in the Belfast/Good Friday Agreement was the introduction of a statutory equality duty on public authorities in Northern Ireland, which was subsequently legislated for under section 75 of the Northern Ireland Act 1998. Many public authorities in Northern Ireland are subject to the requirements of the duty by virtue of coming under the purview of the commissioner of complaints or ombudsman, others require designation by the Secretary of State in order to be covered by the duty.¹
4. Clause 11 of the draft bill would amend s75 to allow the Secretary of State to 'part designate' public authorities for the purposes of the duty, i.e. to allow certain

¹ Northern Ireland Act 1998 as amended s75(3).
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functions, but not others, to be designated. We understand the purpose of this is to allow part designation of currently undesignated bodies operating in Northern Ireland, such as the BBC, in a manner similar to that afforded under the Equality Act 2010 in Great Britain.

5. CAJ appreciates this measure may affect a relatively small number of bodies that require s75 designation, and has the potential to bring functions of bodies currently excluded from the duty within its scope. Nevertheless we would want to guard against a future situation where new bodies requiring Secretary of State designation are routinely part designated.² CAJ would therefore welcome the Committee seeking further detail from the Northern Ireland Office as to the intended purposes for which this power will be exercised and any safeguards which could accompany it.

Power to Change Status of the Northern Ireland Human Rights Commission

6. The paper on the draft bill includes a section on ‘measures still under consideration for potential inclusion in the bill’. This includes ‘devolution of responsibilities relating to arms length bodies’ and singles out the Northern Ireland Human Rights Commission. Consideration appears to be given to using the current bill to provide a power to transfer, by secondary legislation, the Commission – an independent body currently with the NIO as its sponsor department– to the devolved institutions.
7. As the Committee will be aware the Northern Ireland Human Rights Commission is a key safeguard provided for and established as a result of the Belfast/Good Friday Agreement. The Commission is formally accredited within the UN system as an ‘A status’ National Human Rights Institution (NHRI) and its existence, powers and status engage a number of the UK’s international commitments. CAJ believes any change in the Human Rights Commissions status would require detailed consideration to ensure that it is not retrogressive in relation to the Belfast/Good Friday Agreement and other international obligations. CAJ does therefore not believe it would be appropriate to allow any such change through secondary legislation, where a change of some significance could be subject to very limited scrutiny.
8. For example matters which would require consideration are as to whether a devolved Human Rights Commission would still maintain competence to scrutinise the actions of the British government in Northern Ireland or whether its powers, as is the case in Scotland, would only extend to devolved matters. In addition consideration should be given to how such a move affect the UK’s international commitments and the ability of the Commission to function as an ‘A status’ NHRI. Furthermore beyond stating it ‘may become appropriate’ to transfer the functions the draft bill document offers no rationale for proposing the transfer. The

² At present only one body, the Public Prosecutions Service is in effect ‘part designated’ under the legislation, having an exemption for its prosecutorial functions (NI Act 1998 s75(4A)).

Committee could explore governments intentions in relation to the move, including whether the proposal relates to facilitating a merger of the Commission with other bodies.

Parades regulation legislation:

9. Whilst it is not currently listed under the matters under consideration for inclusion in the Bill the Committee will be aware that there is currently discussion underway in relation to the certain provisions in the Public Processions Act 1998. This includes legal certainty issues in relation to the Parades Commission issuing determinations for unnotified public processions, and when action will be taken against persons who organise or participate in unnotified processions. There has also been a longer term discussion regarding updating the explicit criteria in the Act the Parades Commission is to have regard to in determining restrictions. This relates to bringing the criteria more in line with a framework based on explicit provisions of the ECHR.³
10. As the Committee will be aware as a result of the St Andrews and Hillsborough Agreements significant reviews were undertaken of the arrangements for regulating parades, in which such a framework was advocated. The Interim Report of the Strategic Review of Parading (Ashdown Review) set out such an ECHR framework. This was to include criteria for decisions to include the rights of others, including the Belfast/Good Friday Agreement right to freedom from sectarian harassment. The Hillsborough Agreement was to build on this indicating the anticipated framework, which it was later clarified would be based on the ECHR, would reflect the key principles of “Respect for the rights of those who parade, and respect for the rights of those who live in areas through which they seek to parade. This includes the right for everyone to be free from sectarian harassment.”
11. Both review processes ultimately did not lead to legislative change due to a lack of agreement on other matters. However whilst there may be no legal imperative to open up the broader discussions on parade regulation mechanisms, CAJ would urge consideration is given in the current process to amending s8 of the Act to introduce the ECHR led framework envisaged in the strategic review.

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³ Whilst s8(6) of the Public Processions Act 1998 explicitly provides for regard to be given to public disorder considerations it does not explicitly include other grounds listed in ECHR Articles 10(2) and 11(2) – including the ‘rights of others’. Other criteria set out in s8(6) includes ‘community impacts’ criterion which were challenged as not corresponding to ECHR permitted grounds in the Application by David Alexander Tweed for Judicial Review [2000] NICA 24.