



The Joint Committee on Human Rights' Human Rights and Business Inquiry

Summary

The Northern Ireland Human Rights Commission (NIHRC):

notes that adoption of business and human rights concepts within government requires responsibilities, timeframes, and budgets to be allocated to specific departments. (para 9)

notes that case studies to provide practical examples for businesses would be a useful supplement to the UK Update – especially in relation to the third pillar, that of 'remedy'. (para 12)

recommends the Government, when producing business and human rights policies with applicability throughout the UK, should ensure that all of the devolved administrations are effectively consulted. (para 18)

recommends that the Committee consider what measures the UK could introduce to ensure businesses protect, respect, and fulfil (and remedy) human rights when operating outside of the UK. (para 25)

recommends that the FCO and other relevant Westminster and devolved departments develop a joined-up approach to business and human rights and a forward looking strategy to implement the UK Update. (para 29)

recommends that the Committee considers how victims are informed of what remedies are available to them when violations and abuses are perpetrated by businesses. (para 35)

recommends that public procurement contracts should require

business tendering for contracts to have in place a human rights policy agreed at board level. (para 39)

recommends that the Northern Ireland Executive and UK Government departments with competence on issues affecting Northern Ireland adopt business and human rights policy statements as a basis for engagement with private sector businesses in Northern Ireland. (para 44)

recommends that the Committee consider the benefits of Government support for cross-border initiatives that affect human rights and business practices on the island of Ireland. (para 49)

recommends that the Committee highlight the obligation to gather data to monitor and report on businesses which are acting as public authorities. (para 52)

recommends that the Committee highlight a wider obligation to monitor and report on how all businesses and the private sector impact, both positively and negatively, on the enjoyment of human rights. (para 53)

recommends that future public procurement contracts include an ongoing human rights monitoring and reporting mechanism. (para 59)

recommends that the UK makes the relevant declarations under the CERD and the CAT, and ratifies the Optional Protocols to the ICCPR ICESCR, and CRC for their oversight Committees to hear individual petitions of complaint. (para 69)

recommends that the Committee recognise that analysing and benchmarking internal grievances processes can inform monitoring processes and allow for future progress to be measured. (para 76)

recommends that guidance, support, and practical examples on how to approach and implement grievance mechanisms for businesses would make a productive supplement to the UK Update. (para 79)

recommends that the Committee addresses all the risks of retrogression in human rights protections for employees and those accessing facilities, goods, and services provided by private businesses as a consequence of the UK ceasing to be a member of the EU. (para 94)

Introduction

1. The Northern Ireland Human Rights Commission (NIHRC) pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights. In accordance with this function the following statutory advice is submitted to the Joint Committee on Human Rights in response to a call for submissions relating to the Human Rights and Business Inquiry.

2. The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE), United Nations (UN), and European Union (EU) systems. The relevant international treaties in this context include:
 - European Convention on Human Rights, 1950 (ECHR) [UK ratification 1951]
 - European Social Charter, 1961 (ESC) [UK ratification 1962]
 - International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (CERD) [UK ratification 1969]
 - International Covenant on Civil and Political Rights, 1966 (ICCPR) [UK ratification 1976]
 - International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) [UK ratification 1976]
 - United Nations Convention on the Rights of the Child, 1989 (CRC) [UK ratification 1991]
 - The Charter of Fundamental Rights of the European Union,¹ 2000 (CFR) [UK ratification 2000]
 - United Nations Convention on the Rights of Persons with Disabilities (CRPD), 2006 [UK ratification 2009]
 - Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2002 [UK ratification 2009]
 - The Treaty on the Functioning of the European Union, 2012²

3. The Northern Ireland Executive (NI Executive) is subject to the obligations contained within these international treaties by virtue of the United Kingdom (UK) Government's ratification of them and the provisions of the Northern Ireland Act 1998.³

¹ The Additional Protocol has been signed but not ratified [UK signature 2001]

² Official Journal C 326, 26/10/2012 P. 0001 – 0390

³ In addition, Section 26 (1) of the Northern Ireland Act 1998 provides that 'if the Secretary of State considers that any action proposed be taken by a Minister or Northern Ireland department would be incompatible with any international obligations...he may by order direct that the proposed action shall not be taken.' Section 24(1) states that 'a Minister or Northern Ireland department has no power to make, confirm or approve any

4. In addition to the treaties, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include:

- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)
- UN CEDAW Committee General Recommendation 6, Effective National Machinery and Publicity (1988)
- UN CESCR, General Comment 1, Reporting by States parties, Contained in (1989)
- UN HRC, General Comment No. 25 (57) on ICCPR Article 25 (1996)
- UN HRC, General Comment 31, Nature of the General Legal Obligations on States Parties to the Covenant (2004)
- UN CESCR, Commission on Human Rights, Promotion and Protection of Human Rights, Impunity, Report of the Independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity (2005)
- ILO Tripartite Declaration on principles concerning multinational enterprises and social policy (2006)
- UN GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2006)
- UN HRC, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial (2007)
- UN Human Rights Council, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Protect, Respect and Remedy: a Framework for Business and Human Rights, report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie (2008)
- UN OHCHR, Rule-of-law Tools for Post-conflict States, Reparations programmes, 2008
- ILO Declaration on Fundamental Principles and Rights at Work, (1998 (Annex revised 2010))
- EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011, on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

subordinate legislation, or to do any act, so far as the legislation or act – (a) is incompatible with any of the Convention rights'.

- OECD Guidelines for Multinational Enterprises (2011)
- UN Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Business and human rights in conflict-affected regions: challenges and options towards State responses (2011)
- UN General Assembly, report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011)
- UN General Assembly, Resolution 17/4, Human rights and transnational corporations and other business enterprises (2011)
- UN General Assembly, Human rights and transnational corporations and other business enterprises (2011)
- UN, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide (2012)
- UN General Assembly, Contribution of the United Nations system as a whole to the advancement of the business and human rights agenda and the dissemination of the Guiding Principles on Business and Human Rights (2012)
- OSCE, Handbook for Monitoring Administrative Justice (2013)
- UN Global Compact’s Ten Principles (Update 2014)
- UN General Assembly, Human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/RES/26/22 (2014)
- UN General Assembly, Human rights and transnational corporations and other business enterprises, Note by the Secretary-General (2014)
- UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Note by the Secretary-General (2015)
- UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (2015)
- UN Human Rights Council, Promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law: best practices, experiences, challenges and ways to overcome them, Report of the Office of the United Nations High Commissioner for Human Rights, (2015)
- UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland (2016)
- UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, note by the Secretariat (2016)

National Action Plan

5. The UN Guiding Principles on Business and Human Rights (UN Guiding Principles), adopted by the UN Human Rights Council (UN HRC) in 2011,⁴ contain three pillars:

1. The State Duty to Protect Human Rights
2. The Corporate Responsibility to Respect Human Rights
3. Access to Remedy

6. The UN Guiding Principles state that:

'These Guiding Principles should be implemented in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men.'⁵

7. In 2013 the UK was the first state to produce a business and human rights National Action Plan, 'Good Business Implementing the UN Guiding Principles on Business and Human Rights' (NAP), which has been welcomed by the UN.⁶ The NAP states that '[t]his action plan is the UK's national implementation plan for the UN Guiding Principles'.⁷ It explicitly recognises the international human rights obligations applying to public authorities which is key to embedding a human rights based approach. The 2013 NAP details some measures taken and some actions to be taken by the government.

8. In 2016 the UK was the first state to produce an update on its inaugural NAP in 'Good Business, Implementing the UN Guiding Principles on Business and Human Rights, Updated May 2016' (UK Update). The UK Update is largely focused on actions taken and on providing information on international developments. Although the UK Update notes 'Government commitments' it does not provide concrete steps with timeframes or budgets attached to specific Government Departments or public authorities to take forward a business and human rights agenda.

9. The NIHRC notes that adoption of business and human rights concepts within government requires responsibilities, timeframes, and budgets to be allocated to specific departments.

⁴ UN GA Resolution 17/4, Human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/RES/17/4 (2011)

⁵ General Principles

⁶ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, UN Doc. E/C.12/GBR/CO/6 (2016) para 11

⁷ Ministerial Forward

10. The UN Guiding Principles state that:

'Guidance to business enterprises on respecting human rights should indicate expected outcomes and help share best practices. It should advise on appropriate methods, including human rights due diligence, and how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families.'⁸

11. The UK Update focuses largely on pillar one of the UN Guiding Principles, The State Duty to Protect Human Rights, and is not designed as a practical guide for business. The experience of the NIHRC in working with business and human rights in Northern Ireland is that practical guides with concrete and specific steps to take utilising language businesses are familiar with are welcomed. The case studies provided in the UK Update are largely focused on UK Government interactions and projects.

12. The NIHRC notes that case studies to provide practical examples for businesses would be a useful supplement to the UK Update – especially in relation to the third pillar, that of 'remedy'.

Consultation by the Foreign and Commonwealth Office on the National Action Plan

13. The NIHRC welcomes the recognition in the UK Update that in Northern Ireland a Business and Human Rights Forum has been established, with cross-departmental support, to share good practice, and as a means of engaging with the UK NAP.⁹ However it is disappointing that the consultation process undertaken by the FCO on the UK Update was not extended to give an opportunity for this forum and business representatives in Northern Ireland to contribute their views.

14. The NIHRC notes the International Covenant on Civil and Political Rights (ICCPR), Article 25, and that the UN HRC has stated that 'the conduct of public affairs' extends to 'all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.'¹⁰ The UN HRC further provides that '[c]itizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or

⁸ UN Guiding Principles, I. The State Duty to Protect Human Rights, B. Operational Principles, paragraph 3, Commentary

⁹ Good Business, Implementing the UN Guiding Principles on Business and Human Rights, Updated May 2016, para 9

¹⁰ UN HRC, General Comment No. 25 (57) on ICCPR Article 25, UN Doc. CCPR/C/21/Rev.1/Add.7 (1996) para 5

through their capacity to organize themselves.¹¹ The UN OHCHR has stated that '[i]nternational human rights instruments and mechanisms acknowledge the right of all people to be fully involved in and to effectively influence public decision-making processes that affect them.'¹²

15. UN General Comment 31 on the ICCPR notes that:

'A general obligation is imposed on States Parties to respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction'¹³

16. The UK Government has produced 'Consultation Principles 2016' which states that consideration should be given to 'the full range of people, business and voluntary bodies affected by the policy'.¹⁴

17. Individuals, businesses, and organisations in Northern Ireland were interested in contributing, and are still keen to hear how business and human rights will be taken forward by the UK Government; there is an open invitation for the FCO to address the Northern Ireland Business and Human Rights Forum. A London-centric approach can have the greatest impact on small and medium sized enterprises (SMEs). Developing an approach which looks to the regions and devolved administrations would engage more businesses, especially SMEs.

18. The NIHRC recommends the Government, when producing business and human rights policies with applicability throughout the UK, should ensure that all of the devolved administrations are effectively consulted.

Extraterritorial Jurisdiction

19. The UK Update states that:

'Human rights obligations generally apply only within a State's territory and/or jurisdiction. Accordingly, there is no general requirement for States to regulate the extraterritorial activities of business enterprises domiciled in their jurisdiction, although there are limited exceptions to this, for instance under treaty regimes. The UK may also choose as a

¹¹ UN HRC, General Comment No. 25 (57) on ICCPR Article 25, UN Doc. CCPR/C/21/Rev.1/Add.7 (1996) para 8

¹² UN Human Rights Council, Promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law: best practices, experiences, challenges and ways to overcome them, Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/30/26 (2015) para 9

¹³ UN HRC, General Comment 31, Nature of the General Legal Obligations on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004) para 3

¹⁴ UK Government, Consultation Principles 2016, F

matter of policy in certain instances to regulate the overseas conduct of British businesses'.¹⁵

20. The UN Guiding Principles states that:

'There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State's own reputation.'¹⁶

21. The ECHR, Article 1, states that '[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention'. The European Court of Human Rights has found that jurisdiction is largely based on territory, but that extra-territorial jurisdiction exists in situations of state agent authority and control, and in cases of effective control over an area.¹⁷ The UK Supreme Court has adopted a similar approach to the extra-territorial jurisdiction of human rights in *Smith and Others v. The Ministry of Defence*.¹⁸

22. The UK has ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The Sexual Offences (Northern Ireland) Order 2008 implements this Optional Protocol and creates 'Offences outside the United Kingdom' for UK nationals committing crimes abroad.¹⁹

23. The EU Directive on preventing and combating trafficking in human beings and protecting its victims,²⁰ was implemented in Northern Ireland through the Criminal Justice Act (Northern Ireland) 2013 which amends the Sexual Offences Act 2003 to include a section on 'Offences committed in a country outside the United Kingdom', Section 4.

24. The UN Committee on Economic, Social and Cultural Rights recommended in its 2016 concluding observations that the UK:

¹⁵ Paragraph 11

¹⁶ UN Guiding Principles, I. The State Duty to Protect Human Rights, A. Foundational Principles, paragraph 2, Commentary

¹⁷ *Al-Skeini and Others v. The United Kingdom*, Application No. 55721/07, 7 July 2011, para 133-140; and see *Jaloud v. The Netherlands*, Application No. 47708/08, 20 November 2014, para 139

¹⁸ *Smith and Others v. The Ministry of Defence* [2013] UKSC 41

¹⁹ Part 7, paragraph 76

²⁰ EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011, on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Article 10

- (a) 'Establish a clear regulatory framework for companies operating in the State party to ensure that their activities do not negatively affect the enjoyment of economic, social and cultural human rights;
- (b) Adopt appropriate legislative and administrative measures to ensure legal liability of companies domiciled under the State party's jurisdiction, regarding violations of economic, social and cultural rights in their projects abroad, committed directly by these companies or resulting from the activities of their subsidiaries;²¹

25. The NIHRC recommends that the Committee consider what measures the UK could introduce to ensure businesses protect, respect, and fulfil (and remedy) human rights when operating outside of the UK.

Government engagement with business and human rights

26. There has been no contact between the cross-Whitehall Steering Group which monitors the UK's NAP or the National Contact Point which handles complaints about UK corporations. The Northern Ireland Business and Human Rights Forum and the NIHRC would welcome engagement from both bodies.

27. The NIHRC understands that there was limited consultation between the FCO and the devolved Departments in Northern Ireland responsible for finance, trade, economy and business in the development of the UK Update. Both the Department for Finance and the Department for the Economy in Northern Ireland are actively engaged with the Northern Ireland Business and Human Rights Forum.

28. The NIHRC understands that the FCO has been in contact with their Irish counterparts – the Department for Foreign Affairs – to share information on the development of the UK Update.

29. The NIHRC recommends that the FCO and other relevant Westminster and devolved departments develop a joined-up approach to business and human rights and a forward looking strategy to implement the UK Update.

30. The UN Guiding Principles provide that:

'States individually are the primary duty-bearers under international human rights law, and collectively they are the trustees of the international human rights regime. Where a business enterprise is

²¹ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, UN Doc. E/C.12/GBR/CO/6 (2016) para 12

controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligations. Moreover, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights.²²

31. The UN Guiding Principles further provide that:

'States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights. Failure by States to ensure that business enterprises performing such services operate in a manner consistent with the State's human rights obligations may entail both reputational and legal consequences for the State itself. As a necessary step, the relevant service contracts or enabling legislation should clarify the State's expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms.'²³

32. It is clear that businesses 'whose functions are functions of a public nature' are subject to the Human Rights Act in relation to remedy.²⁴

33. The UK NAP notes plans for further work to:

'support access to effective remedy for victims of human rights abuse involving business enterprises within UK jurisdiction'²⁵

34. Victims of violations and abuses by business can access criminal and civil remedies. Victims of violations by businesses acting as public authorities for the purposes Human Rights Act 1998 can access a further set of remedies.²⁶ The NAP and its update do not articulate this

²² UN Guiding Principles, I. The State Duty to Protect Human Rights, B. Operational Principles, paragraph 4, Commentary

²³ UN Guiding Principles, I. The State Duty to Protect Human Rights, B. Operational Principles, paragraph 5, Commentary

²⁴ Human Rights Act 1998, Section 6(3)(b)

²⁵ Introduction

²⁶ See *YL v Birmingham City Council & Others* [2007] UKHL 27 and subsequent legislation, including the proposed amendment to the Health and Social Care Act 2012 which sought to include private sector care homes within the definition of a public authority as per the Human Rights Act 1998. The proposed amendment read:

'292A: Before Clause 280, insert the following new Clause-

"Human Rights Act 1988 [sic]: provision of certain personal care and health care services to be public function

(1) A person who is commissioned to provide-

(a) personal care to an individual living in their own home, or

distinction and the variation in remedy that results within the jurisdictions that constitute the UK.

35. The NIHRC recommends that the Committee considers how victims are informed of what remedies are available to them when violations and abuses are perpetrated by businesses.

36. The UN Guiding Principles detail that:

'States should promote respect for human rights by business enterprises with which they conduct commercial transactions.'²⁷

37. The UN Guiding Principles further detail that:

'States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. This provides States – individually and collectively – with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States' relevant obligations under national and international law.'²⁸

38. In 2013 the NIHRC produced a report, 'Public Procurement and Human Rights in Northern Ireland', as acknowledged in the UK Update,²⁹

(b) a health care service, shall be taken to be exercising a function of a public nature in providing such a service. (2) In subsection (1)(a) "personal care" in relation to England has the same meaning as in paragraph 2 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and in relation to Scotland has the same meaning as "personal care and personal support" as defined in section 2(28) of the Regulation of Care (Scotland) Act 2001 and section 1(1)(c) and Schedule 1 to the Community Care and Health (Scotland) Act 2001. (3) In subsection (1)(a) and (b) "functions of a public nature" has the same meaning as in section 6(3) of the Human Rights Act 1998 (acts of public authorities)." The UK Government rejected this amendment as unnecessary, with Earl Howe stating that 'the Government's view is that all providers of publicly funded health and care services should indeed consider themselves bound by the Act and the duty. Hansard, House of Lords, 13 Mar 2012: Column 238, Earl Howe. Earl Howe added that '[b]y stating expressly that providers of healthcare and homecare services were covered by the Act, we would cast doubt on whether all the areas beyond health and social care were covered by it. However we framed it-whether we made it an avoidance of doubt provision or a deeming provision-we would weaken the applicability of the general test, suggesting that a narrow interpretation of the Act was appropriate and raising doubt about the Act's applicability to all those bodies that had not been specified explicitly in the legislation.' Hansard, House of Lords, 13 Mar 2012: Column 239, Earl Howe. The Care and Support Act 2014 has been introduced subsequently, augmenting but not altering the Government's position as elucidated by Earl Howe.

²⁷ UN Guiding Principles, I. The State Duty to Protect Human Rights, B. Operational Principles, paragraph 6

²⁸ UN Guiding Principles, I. The State Duty to Protect Human Rights, B. Operational Principles, paragraph 6, Commentary

²⁹ Good Business, Implementing the UN Guiding Principles on Business and Human Rights, Updated May 2016', para 9

'to advise on the applicable human rights standards in the context of awarding Government contracts. It aims to engage government departments, other relevant public authorities and private companies, to promote awareness of the important relationship between human rights and business in Northern Ireland.'³⁰ Building from this project, the NIHRC and the Central Procurement Directorate (within the Department for Finance in Northern Ireland) are undertaking a pilot project on how to embed a human rights based approach to public procurement in relation to temporary worker contracts. To our knowledge, this is the first time such a project has been undertaken. It demonstrates a commitment from the Department for Finance in Northern Ireland to human rights by requiring that those tendering for public procurement demonstrate their commitment to human rights. Moving forwards there will be an exploration of how to monitor public procurement contracts from a human rights perspective in the form of reporting requirements on businesses.

39. The NIHRC recommends that public procurement contracts should require businesses tendering for contracts to have in place a human rights policy agreed at board level.

40. The UN Committee on Economic, Social and Cultural Rights recommended in its 2016 concluding observations that the UK:

- (a) Take all appropriate measures to progressively reduce the use of temporary employment, precarious self-employment, and "zero hour contracts", including by generating decent work opportunities that offer job security and adequate protection of labour rights; and
- (b) Ensure that the labour and social security rights of persons in part-time work, precarious self-employment, temporary employment and "zero-hour contracts" are fully guaranteed in law and in practice.³¹

41. The UN Guiding Principles note that:

'There is no inevitable tension between States' human rights obligations and the laws and policies they put in place that shape business practices. However, at times, States have to make difficult balancing decisions to reconcile different societal needs. To achieve the appropriate balance, States need to take a broad approach to managing the business and human rights agenda, aimed at ensuring both vertical and horizontal domestic policy coherence.

³⁰ NIHRC, Public Procurement and Human Rights in Northern Ireland, 2013, 1

³¹ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, UN Doc. E/C.12/GBR/CO/6 (2016) para 32

42. Vertical policy coherence entails States having the necessary policies, laws and processes to implement their international human rights law obligations. Horizontal policy coherence means supporting and equipping departments and agencies, at both the national and subnational levels, that shape business practices – including those responsible for corporate law 11 and securities regulation, investment, export credit and insurance, trade and labour – to be informed of and act in a manner compatible with the Governments’ human rights obligations.³²

43. It is both practically and symbolically important that Government leads the way on business and human rights as a clear indication to business that it values and promotes human rights, as noted in the NAP.³³

44. The NIHRC recommends that the Northern Ireland Executive and UK Government departments with competence on issues affecting Northern Ireland adopt business and human rights policy statements as a basis for engagement with private sector businesses in Northern Ireland.

45. The greatest value to be derived from the UN Guiding Principles is embedding a culture of protecting, respecting, and remedying human rights within business. The Modern Slavery Act 2015 is an example of how to do this. Businesses are taking reporting requirements under the Modern Slavery Act seriously and it is exposing them to the wider area of business and human rights, which many are receptive to. Events organised by Stronger Together, the Ethical Trading Initiative, and the Department of Justice in Northern Ireland have been successful in this regard.³⁴

46. The UN Guiding Principles detail that States should:

‘Provide effective guidance to business enterprises on how to respect human rights throughout their operations’.³⁵

47. Government led events to support businesses with reporting requirements are important to help businesses meet the reporting requirement and demonstrate the government’s commitment to human rights. The Department of Justice in Northern Ireland recently (22nd June 2016) organised a cross-border event with the Government of Ireland on the topic of trafficking and modern slavery.

³² UN Guiding Principles, I. The State Duty to Protect Human Rights, B. Operational Principles, paragraph 8, Commentary

³³ See the Ministerial Forward

³⁴ Please contact if more information is required on these events

³⁵ UN Guiding Principles, I. The State Duty to Protect Human Rights, B. Operational Principles, paragraph 3(c)

48. The Northern Ireland Business and Human Rights forum has brought together a number of businesses interested in supply chain issues, combatting trafficking and modern slavery, reporting and risk management, amongst others, to share knowledge on a wide range of human rights issues. The Department of Finance and the Department for the Economy in Northern Ireland have actively engaged with this forum.

49. The NIHRC recommends that the Committee consider the benefits of Government support for cross-border initiatives that affect human rights and business practices on the island of Ireland.

Monitoring transparency and compliance

50. Monitoring and reporting are obligations are fundamental with the International Covenant on Economic, Social and Cultural Rights (ICESCR).

51. General Comment No. 1 (1989) interpreting ICESCR states that parties should monitor 'the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are, or are not, being enjoyed by all individuals within its territory or under its jurisdiction.'³⁶

52. The NIHRC recommends that the Committee highlight the obligation to gather data to monitor and report on businesses which are acting as public authorities.

53. The NIHRC recommends that the Committee highlight a wider obligation to monitor and report on how all businesses and the private sector impact, both positively and negatively, on the enjoyment of human rights.

54. The UN Guiding Principles detail that States should:

'Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.'³⁷

55. The UN Guiding Principles state that:

³⁶ UN CESCR, General Comment 1, Reporting by States parties, Contained in UN Document E/1989/22 (1989) para 3. Such monitoring requirement are required in relation to other international human rights treaties including CEDAW, see UN CEDAW Committee General Recommendation 6, Effective National Machinery and Publicity (1988), para 1(b)

³⁷ UN Guiding Principles, I. The State Duty to Protect Human Rights, B. Operational Principles, paragraph 3(d)

'In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.³⁸

56. The United Nations has developed a framework to report on business and human rights impacts and risks entitled 'UN Guiding Principles Reporting Framework'.³⁹ The reporting framework, along with the 'UN Guiding Principles Reporting Framework: implementation guidance',⁴⁰ help businesses approach and embed a human rights based approach. The culmination of this process is a two-page self-assessment report.

57. The UK Update notes that the Government has 'supported the UNGPs Reporting Framework, the world's first comprehensive guidance for companies to report on how they respect human rights.
<http://www.ungpreporting.org/>⁴¹

58. Human rights reporting can be encouraged by business and human rights fora, as is done by the Northern Ireland Business and Human Rights Forum and its counterpart in Great Britain supported by the Equality and Human Rights Commission. Reporting requirements can be

³⁸ UN Guiding Principles, II. The Corporate Responsibility to Respect Human Rights, A. Foundational Principles, paragraph 16

³⁹ Other reporting frameworks to document human rights impacts and risks exist, but this framework stands above others as it has been developed and endorsed by the UN.

⁴⁰ There also exists 'Overcoming Reporting Challenges' (2015) which the UN details as 'People working inside companies often face skepticism from their colleagues about the merits of improved disclosure about the company's human rights policies, procedures and practices. This resource highlights some of the challenges that can be raised, and possible responses. The information is gathered from dozens of companies across multiple sectors'; and 'Using the Reporting Framework for Internal Management' which the UN details as 'his resource lists examples of how companies are using the UNGP Reporting Framework to support or improve their internal management of human rights risks, quite apart from their external reporting. Understood and used in this way, companies are finding that the Reporting Framework isn't a burden or cost aimed just at satisfying external readers; but instead, the exercise of answering the questions of the Reporting Framework brings real value to the company's internal management systems'; and further 'Examples of Good Reporting' (2015) which the UN details 'What does good corporate reporting on human rights look like? Based on consultations with multiple investors, analysts and company representatives, we offer the following indicators that look beyond the quantity of information reported and consider the quality of the information included. Examples are from AngloAmerican, Coca-Cola Company, Ericsson, Gap Inc. and H&M', see <http://www.ungpreporting.org/resources/additional-resources/>

⁴¹ Para 24.iv)

legislated for, but can also be required through contractual requirements to report on human rights risks and impacts within procurement contracts. The pilot project run by the Department of Finance in Northern Ireland, with assistance from the NIHRC, is considering how ongoing human rights monitoring and reporting contracts can be included within public procurement contracts.

59. The NIHRC recommends that future public procurement contracts include an ongoing human rights monitoring and reporting mechanism.

Access to remedy

60. International human rights law requires an effective remedy where an individual's rights or freedoms have been violated for example in ECHR, Article 13, which states:

'Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.'

61. The European Court of Human Rights has noted a need for the rights contained in the European Convention of Human Rights to be 'practical and effective, not theoretical and illusory'.⁴²

62. The right to a remedy has been interpreted for gross violations of international human rights law to include the following elements:

- (a) Equal and effective access to justice;⁴³
- (b) Adequate, effective, and prompt reparation;
- (c) Access to relevant information concerning violations and reparations mechanisms;⁴⁴
- (d) Cessation of any on-going violation.⁴⁵

63. Reparation consists of:⁴⁶

⁴² Airey v. Ireland, Series A No. 32, 2 EHRR (1979–1980) 305

⁴³ Justice is often narrowly conceived as constituting only criminal proceedings. However, justice is a much broader legal concept and includes civil, administrative and criminal processes, all of which should be responsive to the specific needs of victims. See, for example, OSCE, Handbook for Monitoring Administrative Justice (2013); ECtHR, Guide on Article 6, Right to a Fair Trial (civil limb) (2013); ECtHR, Guide on Article 6, Right to a Fair Trial (criminal limb) (2014); UN HRC, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007)

⁴⁴ UN GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (2006), Annex, Principle 11

⁴⁵ UN HRC, General Comment 31, Nature of the General Legal Obligations on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004) para 15

- i. Restitution; Restitution should 'restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.'⁴⁷
- ii. Compensation; Compensation 'should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law' including physical or mental harm, lost opportunities (employment, education, social benefits), moral damage, and costs for legal and medical assistance.⁴⁸
- iii. Rehabilitation; Rehabilitation 'should include medical and psychological care as well as legal and social services.'⁴⁹
- iv. Satisfaction; Satisfaction includes '(a) an apology, (b) nominal damages, (c) in case of gross infringements of rights, damages reflecting the gravity of the infringement, (d) in cases of serious misconduct or criminal conduct, disciplinary action, or punishment of, those responsible',⁵⁰ and public memorials.⁵¹ It has also been interpreted to

⁴⁶ UN GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (2006) Annex, para 18 and UN CESCR, Commission on Human Rights, Promotion and Protection of Human Rights, Impunity, Report of the Independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1 (2005) Principle 34 and 35

⁴⁷ UN GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (2006) Annex, para 19; UN CESCR, Commission on Human Rights, Promotion and Protection of Human Rights, Impunity, Report of the Independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1 (2005) para 48;

⁴⁸ UN GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (2006) Annex, para 20

⁴⁹ UN GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (2006) Annex, para 21;

⁵⁰ UN CESCR, Commission on Human Rights, Promotion and Protection of Human Rights, Impunity, Report of the Independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1 (2005) para 48

⁵¹ UN HRC, General Comment 31, Nature of the General Legal Obligations on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004) para 16

include the 'cessation of continuing violations' and the 'public disclosure of the truth'.⁵²

- v. Guarantees of non-repetition;⁵³ Guarantees of non-repetition 'includes institutional reforms tending towards civilian control of military and security forces, strengthening judicial independence, the protection of human rights workers, human rights training, the promotion of international human rights standards in public service, law enforcement, the media, industry, and psychological and social services.'⁵⁴

64. Justice is often narrowly conceived as constituting only criminal proceedings. However, justice is a much broader legal concept and includes civil, administrative and criminal processes, all of which should be responsive to the specific needs of victims.⁵⁵ The UN Basic Principles and Guidelines for Victims highlights 'the right to access justice and fair and impartial proceedings',⁵⁶ and notes that a state must provide 'equal and effective access to justice ... irrespective of who may ultimately be the bearer of responsibility for the violation'.⁵⁷ The state has a procedural obligation to provide access to justice, which includes access to a criminal justice process, but this can also extend to other forms of justice. Access to justice includes access to mechanisms to achieve justice, including civil, criminal, and administrative means, and requires that the relevant judicial or administrative processes are responsive to the specific needs of victims.⁵⁸ It also requires the dissemination 'through public and private

⁵² UN GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (2006) Annex, para 22

⁵³ UN GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (2006) Annex, para 23, and see UN CESCR, Commission on Human Rights, Promotion and Protection of Human Rights, Impunity, Report of the Independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1 (2005), Principle 34

⁵⁴ UN OHCHR, Rule-of-law Tools for Post-conflict States, Reparations programmes, 2008, p7-8

⁵⁵ See, for example, OSCE, Handbook for Monitoring Administrative Justice (2013); ECtHR, Guide on Article 6, Right to a Fair Trial (civil limb) (2013); ECtHR, Guide on Article 6, Right to a Fair Trial (criminal limb) (2014); UN HRC, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007)

⁵⁶ UN GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (2006) Annex, para 12

⁵⁷ UN GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (2006) Annex, para 3(c) and 11(a)

⁵⁸ UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power UN Doc. A/RES/40/34 (1985) Principles 4, 6; also see UN GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of

mechanisms, information about all available remedies for gross violations of international human rights law'.⁵⁹ Access to justice further includes 'access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law.'⁶⁰

65. The UN Guiding Principles provide that:

'As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.'⁶¹

66. The 'current system' available to all victims is the one provided by the state in the form of domestic civil or criminal remedies. These can be accessed through standard mechanism available to all victims, or in specific circumstances and sectors through industrial and employment tribunals. Victims of violations or abuses by business acting as public authorities for the purpose of the Human Rights Act 1998 can access further remedies as provided for by the Human Rights Act.

67. All seven of the international human rights conventions which the UK has ratified contain mechanisms to allow individual petitions of complaint. Remedies which are binding on the state can be awarded by the relevant committees.

68. The UK has not made the relevant declaration required under Article 14 of the CERD or Article 22 of the CAT, nor has the UK ratified the relevant Optional Protocols to the ICCPR, the ICESCR, or the CRC to allow for individual petitions of complaints. Making these declarations and ratifying these Optional Protocols would provide for a greater access to remedies for victims.

69. The NIHRC recommends that the UK makes the relevant declarations under the CERD and the CAT, and ratifies the Optional Protocols to the ICCPR, the ICESCR, and the CRC for their oversight Committees to hear individual petitions of complaint.

International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (2006) Annex, para 12(b)-(d)

⁵⁹ UN GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (2006) Annex, para 12(a)

⁶⁰ The UN GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (2006) Annex, para 12

⁶¹ UN Guiding Principles, III. Access to Remedy, A. Foundational Principle, paragraph 25

70. The UN Guiding Principles note that:

'State-based and operational-level mechanisms, in turn, can be supplemented or enhanced by the remedial functions of collaborative initiatives as well as those of international and regional human rights mechanisms.'⁶²

71. The UN Guiding Principles note that:

'In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be:

- (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.'⁶³

72. The UK NAP states that a key principle for UK companies is to 'adopt or participate in effective grievance mechanisms which are transparent, equitable and predictable, to enable the remediation of any adverse human rights impacts they cause or to which they contribute'⁶⁴

⁶² UN Guiding Principles, III. Access to Remedy, A. Foundational Principle, paragraph 25, Commentary

⁶³ UN Guiding Principles, III. Access to Remedy, A. Foundational Principle, paragraph 31

⁶⁴ Section 3

73. In relation to the UK Government, the NAP states:

'We recognize that remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions, as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.'⁶⁵

74. Some businesses already provide internal mechanisms to provide certain remedies, but often where these exist they can vary widely between businesses and across sectors.⁶⁶ There is no benchmark standard of what is available, although the importance of benchmarking is noted in the UK Update in relation to businesses' performances.⁶⁷

75. The UN Committee on Economic, Social and Cultural Rights has stated that 'the essential first step towards promoting the realization of economic, social and cultural rights is diagnosis and knowledge of the existing situation.'⁶⁸

76. The NIHRC recommends that the Committee recognise that analysing and benchmarking internal grievances processes can inform monitoring processes and allow for future progress to be measured.

77. Neither the NAP nor the UK Update detail how the different forms of remedy can be translated through practical steps that businesses can take into internal grievance mechanisms.

78. The UK Update contains one paragraph on remedy which provides encouragement from the Government to businesses to review grievance procedures.⁶⁹

79. The NIHRC recommends that guidance, support, and practical examples on how to approach and implement grievance mechanisms for businesses would make a productive supplement to the UK Update.

The Effects of the UK Leaving the EU

⁶⁵ Section 4

⁶⁶ See <https://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/access-to-remedies-grievance-mechanisms/non-judicial-grievance-mechanisms/state-based> and <https://business-humanrights.org/en/grievance-mechanisms-non-judicial>

⁶⁷ Paragraph 5

⁶⁸ UN CESCR, General Comment 1, Reporting by States parties, Contained in UN Document E/1989/22 (1989) para 3

⁶⁹ Paragraph 23

80. In the Van Gend en Loos judgement the European Court of Justice (now Court of Justice of the European Union, CJEU) found that Community law not only 'imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage'.⁷⁰ The CJEU through its case law continued to develop human rights standards, which formed part of the 'general principles' of EU law as identified on a case by case basis.⁷¹

81. The Treaty on European Union at Article 2 declares:

'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

82. In 1999 the EU began the process of collating rights developed by the CJEU and other institutions into the EU Charter of Fundamental Rights. The Charter was proclaimed in 2000 but was not given legal status until 2007 in the Treaty of Lisbon, which stated that it had equal legal status with the EU Treaties.⁷² The Charter binds EU institutions and member states when they are implementing EU laws and policies.

83. Certain sectors, including persons with disabilities, and women, will be affected more than others in relation to business and human rights.

84. This is exemplified by the fact that the EU has ratified the UN Convention on the Rights of Persons with Disabilities and as such is bound to comply with its provisions.

85. The EU is given competence regarding disability issues via article 19 TFEU which states that appropriate action may be taken to combat- among others- discrimination based on disability. Likewise Article 10 TFEU provides a basis for disability rights mainstreaming within the EU stating that 'in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on [among others] disability.'

86. In light of these provisions, the Employment Directive 2000/78/EC was adopted, creating a source of community law from which EU citizens affected by disability discriminations could derive justiciable rights in the area of employment. The Directive was implemented in Northern Ireland

⁷⁰ Case 26/62, NV Algemene Transporten Expeditie Onderneming van Gend en Loos v. Nederlandse Administratie der Belastingen [1963] ECR 1.

⁷¹ Open Society Foundation, Israel Butler 'Background Paper: The EU Charter of Fundamental Rights: What can it do? February 2013

⁷² Effects of the EU Charter of Rights in the UK Standard Note: SN/IA/6765 Last updated: 17 March 2014 Author: Vaughne Miller

by the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004. The 1995 Act expanded previous disability discrimination legislation to protect the rights of disabled persons faced with direct discrimination in the workplace, a failure by employers to make reasonable adjustments to accommodate their needs and less favourable treatment for a reason related to disability.⁷³

87. The rights protected by the Employment Directive have been extended by CJEU jurisprudence, notably in the case of *EBR Attridge Law LLP v Coleman*⁷⁴ the Directive was interpreted by the CJEU to include protection from "associative discrimination" in relation to both direct discrimination and harassment, i.e. an employer's harassment or less favourable treatment of a non-disabled employee on the grounds of their association with a disabled person is unlawful.

88. The equal treatment of men and women has been a fundamental tenet of the EU since its inception and the principle of gender equality is central to all its activities. The TEU commits Member States to non-discrimination and equality between men and women in Article 2 and 3. Likewise the TFEU provides that the EU will aim to eliminate inequalities and promote equality between men and women (Article 8). The Charter also states that equality between men and women must be ensured in all areas, including employment, work and pay (Article 23).

89. In keeping with these provisions, a series of EU directives aimed at securing the equality of men and women in the workplace have been adopted over a number of years (Directives 76/207/EEC; 2002/73/EC; 75/117/EC; 86/378/EEC). These have recently been consolidated in the 2006 Recast Directive (2006/54/EC). This Directive provides women with a number of enforceable rights including: equal treatment in the workplace free from harassment or discrimination on grounds of sex (Article 14); equal pay for equal work or for work of equal value (Article 4); equality in occupational social security schemes (Article 5); and equal access to training and promotion. In order to realise these rights the Directive requires that Member States take positive action to ensure full equality in practice (Article 3). Directive 92/85/EEC specifically targets the improvement of working conditions for pregnant women and new mothers and entitles women to a continuous period of maternity leave of 14 weeks and paid time off for ante-natal examinations. Directive 2004/113/EC extends the equality rights of women into the sphere of access to and supply of goods and services.

⁷³ Wells, 'The Impact of the Framework Employment Directive on UK Disability Discrimination Law' *Industrial Law Journal*, Vol.32, No. 4, December 2003; Kajtar, 'Life outside the bubble: International and European legal framework of disability discrimination in employment' (6) *PMJK* 2013 5.

⁷⁴*EBR Attridge Law LLP (formerly Attridge Law) v Coleman* Employment Appeal Tribunal, 30 October 2009

90. The above provisions were given effect in NI by a number of amendments to our legislative framework for instance the Equal Pay Act (Northern Ireland) 1970 and the Sex Discrimination (Northern Ireland) Order 1976.

91. *Webb v EMO Air Cargo (UK) Ltd* is a good illustration of how EU law has affected women's rights in the UK.⁷⁵ Ms Webb had been employed for an indefinite term to cover the maternity leave of another employee. Shortly after recruitment however she too fell pregnant and was subsequently dismissed on the grounds that she could not fulfil a fundamental condition of her employment contract. The House of Lords relied on Directive 76/207/EEC in reaching a judgment that UK legislation precluded such dismissal as discriminatory. Furthermore the Lords found that no comparison should be made with a man dismissed for medical or other reasons as the two circumstances are materially different.

92. In the event of withdrawal future EU law may cease to apply to the United Kingdom. However, any national acts adopted in implementation or transposition of EU law would remain valid unless the Westminster Parliament amended or repealed them. A House of Commons Research and Library service briefing paper recently summarised the current position namely that:

93. 'If the UK withdrew from the EU, it would no longer have to comply with the human rights obligations of the EU Treaties, including with the EU Charter of Fundamental Rights. Although the Charter was not intended to create any new rights, a breach can result in the UK courts disapplying UK Acts of Parliament – something they cannot do under other human rights instruments.'⁷⁶

94. The NIHRC recommends that the Committee addresses all the risks of retrogression in human rights protections for employees and those accessing facilities, goods, and services provided by private businesses as a consequence of the UK ceasing to be a member of the EU.

⁷⁵ *Webb v EMO Air Cargo (UK) Ltd* [1995] 1 W.L.R. 1454 (House of Lords)

⁷⁶ Briefing Paper Number 07213, 12 February 2016 Exiting the EU: impact in key UK policy areas para 13.1