



[CLICK HERE FOR MEMO](#)

---

**AN BILLE UM CHEARTA AN DUINE, 1998**  
**HUMAN RIGHTS BILL, 1998**

---

*Mar a tionscnaíodh*  
*As initiated*

---

ARRANGEMENT OF SECTIONS

PART I

Human Rights Instruments

Section

1. Human rights instruments to have force of law.
2. Ratification of Certain Unratified Human Rights Instruments.
3. Future Instruments.
4. Interpretation of Conventions.
5. Interpretation of legislation.
6. Declarations of incompatibility.
7. Proceedings.
8. Judicial remedies.
9. Judicial acts.
10. Safeguards for existing human rights.
11. Conflict between this Act and the Constitution.
12. Derogations and reservations.

PART II

Human Rights Commission

13. Human Rights Commission.
14. Functions.
15. Composition.
16. Joint Committee.

PART III  
General Provisions

Section

- 17. Regulations and Orders.
- 18. Interpretation.
- 19. Short title and commencement.

-----

Acts Referred to

Criminal Justice (Release of Prisoners) Act, 1998	1998, No. 36
Employment Equality Act, 1998	1998, No. 21
Ombudsman Act, 1980	1980, No. 26



---

**AN BILLE UM CHEARTA AN DUINE, 1998**  
**HUMAN RIGHTS BILL, 1998**

---

# **BILL**

*entitled*

5 AN ACT TO PROVIDE FOR MORE EFFECTIVE PROTECTION OF HUMAN RIGHTS, TO MAKE CERTAIN INTERNATIONAL HUMAN RIGHTS INSTRUMENTS PART OF DOMESTIC LAW, TO ESTABLISH A COMMISSION TO BE KNOWN AS AN COIMISIÚN UM CHEARTA AN  
10 DUINE OR IN THE ENGLISH LANGUAGE THE HUMAN RIGHTS COMMISSION, TO IMPLEMENT CERTAIN PROVISIONS OF THE BRITISH-IRISH AGREEMENT DONE AT BELFAST ON THE 10th DAY OF APRIL 1998 AND TO PROVIDE FOR RELATED MATTERS.

15 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

## **PART I**

### **Human Rights Instruments**

1.—The following shall have the force of law in the State—

Human rights instruments to have force of law.

- (a) the European Convention;
- 20 (b) the International Covenant on Civil and Political Rights done at New York on the 16th day of December, 1966, and the protocols thereto, namely the Optional Protocol done at New York on the 16th day of December, 1966 and the Second Optional Protocol done at New York on  
25 the 15th day of December, 1989;
- (c) the International Covenant on Economic, Social and Cultural Rights, done at New York on the 16th day of December, 1966;
- 30 (d) the Convention on the Elimination of All Forms of Discrimination against Women, done at New York on the 18th day of December, 1979;
- (e) the Convention on the Rights of the Child, done at New York on the 20th day of November, 1989;
- (f) subject to *section 2*, the Torture Convention;
- 35 (g) subject to *section 2*, the Racial Discrimination Convention; and

- (h) such other international human rights instruments (if any) as may be prescribed by order under *section 3*.

Ratification of  
Certain Unratified  
Human Rights  
Instruments.

**2.**—The State shall, within 2 months from the passing of this Act, ratify or otherwise become a party to the following instruments—

- (a) Protocol No. 7 to the European Convention, done at Strasbourg on the 22nd day of November, 1984; 5
- (b) the Torture Convention;
- (c) the Racial Discrimination Convention;
- (d) the Council of Europe Framework Convention for the Protection of National Minorities, done at Strasbourg on the 1st day of February, 1995; and 10
- (e) the European Social Charter (Revised) done at Strasbourg on the 3rd day of May, 1996, and the Additional Protocol to the European Social Charter providing for a System of Collective Complaints, done at Strasbourg on the 9th day of November, 1995. 15

Future Instruments.

**3.**—The Taoiseach may by order prescribe any instrument done after the passing of this Act for the purposes of *section 1(h)*, or any Protocol to the European Convention done after the passing of this Act for the purposes of *paragraph (f)* of the definition of “European Convention” in *section 17*. 20

Interpretation of  
Conventions.

**4.**—(1) A court or tribunal determining a question which has arisen under this Act in connection with the Conventions or any of them shall take into account any relevant decision of any international court or tribunal having functions in relation to the Convention concerned and, in particular, in relation to the European Convention any— 25

- (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights,
- (b) opinion of the European Commission given in a report adopted under Article 31 of the Convention, 30
- (c) decision of the European Commission in connection with Article 26 or 27(2) of the Convention, or
- (d) decision of the Committee of Ministers taken under Article 46 of the Convention, 35

whenever made or given, so far as, in the opinion of the first-mentioned court or tribunal, it is relevant to the proceedings in which that question has arisen.

(2) Evidence of any judgment, decision, declaration or opinion of which account may have to be taken under this section may be given in proceedings before any court or tribunal in such manner as may be provided by rules of court (in relation to a court) or regulations made under *section 17* by the Taoiseach (in relation to a tribunal). 40

(3) Where a court is of the opinion that a conflict arises or may arise between the obligations imposed by the several Conventions 45

implemented by this Act, or any two or more of them, it shall as far as possible interpret the Conventions (or the relevant Conventions) in a harmonious manner and if this is not possible it shall afford priority to the European Convention on Human Rights and its Protocols, and as between any other Convention which is part of the law and an instrument not part of the law it shall afford priority to the Convention which is part of the law of the State.

5—(1) So far as it is possible to do so, primary legislation and subordinate legislation shall be read and given effect in a way which is compatible with the Conventions.

Interpretation of legislation.

(2) This section applies to primary legislation and subordinate legislation whenever enacted.

6—(1) If, in any proceedings, a court or tribunal determines that a provision of primary or secondary legislation is incompatible with the Conventions, it shall make a declaration of that incompatibility and such consequential orders as the justice of the case requires.

Declarations of incompatibility.

(2) Where the court or tribunal makes a declaration under this section, or where such a declaration has been made in the matter by another court or tribunal, it shall apply this Act and the Convention concerned in preference to the impugned provision, and that provision shall be deemed to be subject to such limitation or exception to the extent necessary to avoid the incompatibility and to that extent only.

(3) Where a court or tribunal is considering whether to make a declaration of incompatibility, the Attorney General (if he or she is not already a party to the proceedings) shall be entitled to notice in accordance with rules of court and shall be entitled, on giving notice in accordance with rules of court, to be joined as a party to the proceedings.

(4) Notice given by the Attorney General under *subsection (3)* may be given at any time during the proceedings.

(5) Where, apart from this subsection, no appeal from a declaration of incompatibility would lie to the Supreme Court from a decision of a court or tribunal, an appeal at the instance of any party to the proceedings shall lie to the Supreme Court from that court or tribunal.

(6) In criminal proceedings an appeal by the prosecution or by the Attorney General under *subsection (5)* shall be without prejudice to any acquittal or sentence imposed by the court whose declaration is appealed against.

(7) Any rule of law or equity which is incompatible with the Conventions is hereby abrogated to the extent of such incompatibility and to that extent only.

7.—(1) A person who claims that another person (including a public authority) (hereinafter referred to as “the defendant”) has acted (or proposes to act) in a way which is made unlawful by this Act may—

Proceedings.

(a) bring proceedings against the defendant under this Act in the appropriate court or tribunal, having regard to the level of damages (if any) claimed, or

(b) rely on the Conventions in any legal proceedings,

but only if he or she is (or would be) a victim of the unlawful act.

(2) If the proceedings are brought on an application for judicial review, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he or she is, or would be, a victim of that act. 5

(3) Proceedings under *subsection (1)(a)* must be brought before the end of—

(a) the period of limitation applying to the form of action in question (if any), or 10

(b) such longer period as the court or tribunal considers equitable having regard to all the circumstances.

(4) Where the Commission claims that the defendant has acted (or proposes to act) in a way which is made unlawful by this Act, it may— 15

(a) bring proceedings against the defendant under this Act in the appropriate court or tribunal, having regard to the level of damages (if any) claimed, or

(b) intervene in any relevant proceedings as *amicus curiae*, provided that no order for costs may be made in favour of or against the Commission where it acts in this capacity. 20

(5) If the proceedings under *subsection (4)* are brought on an application for judicial review, the Commission is to be taken to have a sufficient interest in relation to the unlawful act.

(6) Proceedings under *subsection (4)* must be brought before the end of— 25

(a) the period of limitation applying to the form of action in question (if any), or

(b) such longer period as the court or tribunal considers equitable having regard to all the circumstances. 30

Judicial remedies.

**8.**—In relation to any act (or proposed act) of the defendant which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

Judicial acts.

**9.**—(1) Proceedings under *section 7(1)(a)* in respect of a judicial act may be brought— 35

(a) by exercising a right of appeal;

(b) on an application for judicial review (where judicial review lies);

(c) in a case where no appeal lies but for this section, by exercising a right of appeal to the Supreme Court from the decision complained of; 40

(d) in the case of a claim under *section 7(1)(a)* in relation to a decision of the Supreme Court (“the first-mentioned decision”), by the making of an originating application to that court in accordance with rules of court under this section for relief arising out of a claim that the first-mentioned decision was a contravention of the Conventions.

(2) The decision of the Supreme Court (“the second-mentioned decision”) on an application under *subsection (1)(d)* shall be without prejudice to the first-mentioned decision and shall not affect the finality of that decision.

(3) This section does not affect any rule of law which prevents a court from being the subject of judicial review.

**10.**—A person’s reliance on the Conventions does not restrict—  
Safeguards for existing human rights.

(a) any other right or freedom consistent with the Conventions conferred on him or her by or under any law having effect in the State; or

(b) his or her right consistent with the Conventions to make any claim or bring any proceedings which he or she could make or bring apart from *sections 7 to 9*.

**11.**—Where any conflict arises between this Act and the Constitution, this Act shall be subject to such limitation to the extent necessary to avoid the conflict but to that extent only.  
Conflict between this Act and the Constitution.

**12.**—Subject to any contrary provision of the Conventions, any derogation or reservation to the Conventions for the time being in force shall cease to have effect one year after the passing of this Act, or in the case of a derogation or reservation adopted after the passing of this Act, not later than one year after it is adopted, but may be renewed from time to time for a period of not more than one year on any one occasion with the consent of both Houses of the Oireachtas.  
Derogations and reservations.

## PART II

### Human Rights Commission

**13.**—(1) There is hereby established a body corporate to be known as An Coimisiún um Chearta an Duine or in the English language the Human Rights Commission, to perform the functions conferred on it by this Act.  
Human Rights Commission.

(2) The Commission shall consist of a full-time Chairperson and nine other members appointed by the Taoiseach in accordance with this Act.

(3) Subject to the provisions of this Act, Part V of the Employment Equality Act, 1998 shall apply to the Commission with any necessary modifications.

**14.**—The Commission shall—  
Functions.

(a) in accordance with this Act, and with the UN “Paris Principles” on National institutions for the promotion and

protection of human rights (A/RES/48/134, 85th plenary meeting, 20 December, 1993), and the UN Centre for Human Rights Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, have competence to promote and protect human rights; 5

- (b) assist individuals who claim to be victims of violation of human rights and in particular assist such individuals to take appropriate legal action or to take or intervene in such action on their behalf; 10
- (c) investigate any complaint that human rights have been violated, enjoy the same powers to compel the production of documents as the Ombudsman enjoys under the Ombudsman Act, 1980, afford the opportunity of conciliation to the parties to the complaint, and if necessary make recommendations for action which shall be embodied in a report to the Taoiseach which shall be laid before both Houses of the Oireachtas; 15
- (d) at the request of the Taoiseach or of its own motion, submit to the Government, each House of the Oireachtas and any other competent body, and publish advice, opinions, recommendations, proposals and reports on any matters (in particular, Bills or draft Bills) concerning the promotion and protection of human rights; 20
- (e) examine the text of all Bills introduced or presented to either House of the Oireachtas and report to each House within two weeks on the compatibility of the Bill with the Conventions; 25
- (f) examine (on a confidential basis and at its executive level only) the text of all draft schemes of Government Bills, which the Secretary-General to the Government is hereby required to transmit to the Commission prior to submission to Government, and report to the Secretary-General within two weeks (or such shorter period as the Secretary-General may reasonably require in the exceptional circumstances of the case) on the compatibility of the proposed Bill with the Conventions; 30 35
- (g) promote the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation; 40
- (h) encourage ratification of human rights instruments or accession to those instruments, and their implementation;
- (i) contribute to the reports which the State is required to submit to United Nations bodies and committees, and to relevant Council of Europe institutions, pursuant to its treaty obligations; 45
- (j) co-operate with the United Nations and any other organisation in the United Nations system, the relevant Council of Europe institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights; 50



(k) assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional bodies;

(l) provide information about and encourage awareness of human rights.

**15.**—(1) In appointing members to the Commission, the Taoiseach shall nominate:

(a) three members representative of non-governmental organisations responsible for human rights and efforts to combat discrimination, including trade unions and relevant social and professional organisations;

(b) two members representative of individuals or institutions engaged in the analysis and study of principles of human rights, including third-level institutions or other expert bodies or individuals;

(c) three members having stated knowledge and experience in the field of human rights nominated by each of the three largest parties represented in Dáil Éireann and registered on the Register of Political Parties;

(d) one member being an officer of the Taoiseach, who shall have the right to attend and speak at meetings of the Commission but not to vote thereat.

(2) Subject to *subsection (1)* a member shall be appointed for a term of four years which may be renewed once.

**16.**—The Commission shall participate in the Joint Committee to be established under paragraph 10 of the provisions entitled “Rights, Safeguards and Equality of Opportunity” of the Agreement reached in the Multi-Party Talks.

### PART III

#### General Provisions

**17.**—(1) The Taoiseach may make regulations for the purpose of giving effect to this Act or for prescribing any matter referred to in this Act as prescribed or to be prescribed.

(2) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to anything previously done thereunder.

(3) Any order or regulation made under this Act may contain such consequential, supplementary and ancillary provisions as the Taoiseach considers necessary or expedient.

**18.—**(1) In this Act, unless the context otherwise requires—

“the Agreement reached in the Multi-Party Talks” has the meaning assigned by section 1 of the Criminal Justice (Release of Prisoners) Act, 1998;

“the Commission” means the Commission established under *section 13* of this Act; 5

“the Conventions” means the international instruments referred to in *section 1* which are part of the law by virtue of that section;

“court” means any court in the State;

“declaration of incompatibility” means a declaration under *section 6*; 10

“the European Commission” means the European Commission of Human Rights;

“the European Convention” means—

- (a) the European Convention on Human Rights and Fundamental Freedoms done at Rome on the 4th day of November 1950, as amended by Protocol No. 2, Protocol No. 3, Protocol No. 5, Protocol No. 8, Protocol No. 9, Protocol No. 10 and Protocol No. 11, 15
- (b) the Protocol to the Convention done at Paris on the 20th day of March 1952, 20
- (c) Protocol No. 4 to the Convention done at Strasbourg on the 16th day of September 1963,
- (d) Protocol No. 6 to the Convention done at Strasbourg on the 28th day of April 1983, 25
- (e) subject to *section 2*, Protocol No. 7 to the Convention done at Strasbourg on the 22nd day of November, 1984, and
- (f) such further protocols (if any) as may be prescribed for the purposes of this section,

subject to any derogation or reservation for the time being in force in relation to the State in accordance with *section 12*; 30

“judge” includes a member of a tribunal, or an officer entitled to exercise the jurisdiction of a court or tribunal;

“judicial act” means a judicial act of a court or tribunal and includes an act done on the instructions, or on behalf, of a judge; 35

“legal proceedings” includes—

- (a) proceedings brought by or at the instigation of a public authority, and
- (b) an appeal against the decision of a court or tribunal;

“primary legislation” means any— 40

- (a) public general Act, or

(b) private Act;

“public authority” includes any authority exercising the executive, legislative or judicial power of the State;

5 “Racial Discrimination Convention” means the International Convention on the Elimination of All Forms of Racial Discrimination, done at New York on the 21st day of December, 1965;

“subordinate legislation” means any order, rules, regulations, scheme, warrant, bye-law or other instrument made under primary legislation;

10 “Torture Convention” means the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on the 10th day of December, 1984;

“tribunal” means any tribunal in the State in which any claim or proceedings of a legal nature may be brought.

15 (2) In this Act—

(a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended;

20 (b) a reference to a subsection is a reference to the subsection of the provision in which the reference occurs, unless it is indicated that reference to some other provisions is intended;

25 (c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment (including this Act).

**19.—**(1) This Act may be cited as the Human Rights Act, 1998. Short title and commencement.

(2) This Act shall come into operation on the day that is two months from the passing of this Act.



[CLICK HERE FOR BILL](#)

---

**AN BILLE UM CHEARTA AN DUINE, 1998**  
**HUMAN RIGHTS BILL, 1998**

---

**EXPLANATORY MEMORANDUM**

---

*Purpose of the Bill*

The main objects of the Bill are as follows—

- To make the European Convention on Human Rights and its Protocols part of our law, in line with the practice in almost all other European countries that are signatories to the Convention, including Britain, where an Act has been passed to this effect. The other State that has not incorporated the Convention is Norway where a decision has been taken to that effect.
- To make a number of UN human rights conventions part of the law, namely the International Covenant on Civil and Political Rights and the protocols thereto, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Torture Convention and the Racial Discrimination Convention, and such other instruments (if any) as may be prescribed by order.
- To require the State to ratify a number of human rights instruments which it has not yet ratified namely, Protocol 7 to the European Convention, the Torture Convention, the Racial Discrimination Convention, the Council of Europe Framework Convention for the Protection of National Minorities and the Revised European Social Charter and its additional protocol.
- To establish a Human Rights Commission with a broad ranging remit to protect and promote human rights based on UN guidelines and principles for human rights institutions.
- To implement the human rights provisions of the Good Friday Agreement.

*Provisions of Bill*

**PART I**

**Human Rights Instruments**

*Sections 1 to 12*

*Section 1* makes the Conventions part of the law. *Section 2* requires the State to ratify a number of instruments which it has not yet ratified namely, Protocol 7 to the European Convention, the Torture Convention, the Racial Discrimination Convention, the Council of

Europe Framework Convention for the Protection of National Minorities and the Revised European Social Charter and its additional protocol. *Section 3* provides for possible future human rights instruments.

*Section 4* requires that in interpreting the Conventions regard shall be had to decisions of international bodies under the Conventions, such as the European Court of Human Rights. *Section 5* provides that legislation must be interpreted in line with the Conventions if possible.

*Section 6* provides for declarations of incompatibility between the Bill and other laws. In such cases this Bill would have priority subject to *section 11*. The Bill provides for legal proceedings (*section 7*) and judicial remedies (*section 8*) including remedies where it is claimed that a judicial act can be challenged under the Conventions (*section 9*). The Bill safeguards existing human rights (*section 10*) and provides expressly that no section may be taken to interfere with any constitutional right or provision (*section 11*).

The provisions of *Part I* draw on the Human Rights Act 1998 introduced by the British Government. That Act was passed on 9 November 1998.

## PART II

### Human Rights Commission

#### *Sections 13 to 17*

*Section 13* establishes a new Human Rights Commission, drawing on the Northern Ireland Bill 1998 introduced by the British Government. Its functions (*section 14*) and composition (*section 15*) are based on the UN "Paris Principles" on National Institutions for the Promotion and Protection of Human Rights (see A/RES/48/134, 85th plenary meeting, 20 December 1993). *Section 16* provides that the Commission shall participate in the new Joint Committee with the Northern Ireland Human Rights Commission under the Good Friday Agreement.

## PART III

### General Provisions

#### *Sections 17 to 19*

*Section 17* provides for regulations. *Section 18* provides for interpretation. The definition of "European Convention" takes into account the fact that Protocols 2 and 9 have been repealed by Protocol 11. The text of Protocol 10 is also replaced by Protocol 11. *Section 19* provides for the short title and commencement.

*An Teachta Ruairí Ó Cuinn,  
Nollaig, 1998.*