

Independent Human Rights Act Review

Supplementary Note

1. This note has been prepared following a request from the Panel during the evidence session with the Law Society and Bar of Northern Ireland on Thursday 25 March.
2. In its written submissions, the Bar of Northern Ireland made two points of principle which are relevant to the IHRAR:

- (i) In Strand 3 of the Belfast Agreement relating to *Rights, Safeguards and Equality of Opportunity* and under the heading “*United Kingdom Legislation*” the UK Government gave an express commitment to “*complete incorporation into Northern Ireland law of the ECHR, with direct access to the Courts and remedies for breach of the Convention including power for the courts to overrule Assembly legislation on grounds of inconsistency*” [Para 11]; and
- (ii) Any primary legislation which amended the HRA should be the subject of prior consultation with the NI Assembly by means of a Legislative Consent Motion, in accordance with the Sewel Convention [Para 20].

3. The Bar would also like to draw the Panel’s attention to Part 11 of the Belfast Agreement under the heading “Validation, Implementation and Review”. This section prescribes the procedures by which each Government committed to secure the implementation of the Agreement within their respective jurisdictions and for review of implementation measures. Paragraphs 5 and 6 concern any emerging need to review the operation of specific institutions created on foot of the agreement. They provide for review procedures which are either internal to the institution in question or jointly with other institutions. Paragraph 7 provides for a broader review procedure:

7. If difficulties arise which require remedial action across the range of institutions, or otherwise require amendment of the British-Irish Agreement or relevant legislation, the process of review will fall to the two Governments in consultation with the parties in the Assembly. Each Government will be responsible for action in its own jurisdiction. (emphasis added)

4. This review procedure applies where “*difficulties*” arise which require “*amendment of relevant legislation.*” Since the HRA is expressly identified in Strand 3 as a UK Government legislative commitment, it would seem clear that it is “*relevant legislation*” for the purposes of Paragraph 7. Amendment of the HRA in terms which were more than *de minimis* would therefore engage this review procedure. The procedure goes further than the Sewel Convention requirement for consultation with the NI Assembly on the legislative proposals. There may be room for debate about how compliance with the review procedure might be

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achieved. However, it is likely to involve at least prior consultation with the Irish Government and the NI political parties on the legislative proposals for amendment of the HRA. It could also be interpreted as requiring the agreement of all of those bodies. It might even be contended that the IHRAR is itself a “*process of review*” within the meaning of Paragraph 7 and therefore ought itself to engage in consultation with the Irish Government and NI political parties.