Independent Human Rights Act Review (IHRAR) – Human Rights Consortium Submission to the call for evidence

March 2021

The **Human Rights Consortium** is a human rights charity and coalition of civil society organisations from across Northern Ireland which was established in 2000. Our membership includes almost 170-member organisations from a range of community and voluntary grassroots groups, NGOs and Trade Unions, drawn from all sections of the community and all parts of Northern Ireland. We work together towards the development of a human rights based Northern Ireland.

The Human Rights Consortium has very serious concerns about the Government's intention in triggering a review of the Human Rights Act. The Government in various approaches since 2010 have been attempting to remove the Human Rights Act (HRA) and undermine the access that individuals have to rights within the European Convention on Human Rights (ECHR). Previous attempts at doing so have not been so veiled, with proposals being made in 2014 to 'scrap the Human Rights Act and replace it with a British Bill of Rights.[1]

The unexpected and protracted process of the UK's withdrawal from the UK delayed attempts to implement that proposal and extended opposition to these plans from the public and civil society highlighted both the opposition and complexity of such an undertaking. From a Northern Ireland perspective, it became clear that the centrality of the HRA/ECHR to the local peace settlement meant that any removal of the HRA would be a clear violation of the Belfast/Good Friday Peace Agreement. The UK Government has also since committed to maintaining its linkage to the ECHR following the realisation that withdrawing from the Convention would likely undermine future relations regionally, in particular the complicated justice and security arrangements with other European counterparts in a post Brexit environment.

We are disappointed that the Governments opposition to the Human Rights Act persists and has shifted in focus to attempting to undermine the linkages with the European Court of Human Rights (ECtHR), its jurisprudence and limiting the capacity of domestic courts to interpret existing legislation and Government actions in line with Convention rights as envisaged under the HRA.

In our view, breaking the linkage between the ECtHR and the UK courts and changing the way Convention rights are applied via the HRA would clearly weaken existing rights protections in the UK

[1] Protecting Human Rights in the UK: the Conservatives' Proposals for Changing Britain's Human Rights Laws, 2014

and in turn violate the Belfast/Good Friday Agreement. We therefore strongly urge the review to recommend no changes to the current application of the Human Rights Act.

Belfast/Good Friday Agreement

A core element of the Belfast/Good Friday Agreement is a commitment to placing human rights and equality protections at the heart of the new set of relationships and institutions established by the peace agreement.

The Agreement outlines that the new Strand One institutions of the Northern Ireland Assembly will have *'safeguards to ensure that all sections of the community can participate and work together successfully in the operation of these institutions and that all sections of the community are protected'*[2]. It continues to outline that these safeguards will include 'the European Convention on Human Rights (ECHR) and any Bill of Rights for Northern Ireland supplementing it, which neither the Assembly nor public bodies can infringe'[3]

This is further expanded and reinforced in the Rights, Safeguards and Equality of Opportunity section of the Agreement which outlines the British Government's commitment to *'complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention'*[4]

This commitment was realised through the passing of the Human Rights Act which has been fundamental in the protection of human rights in this jurisdiction since. While the commitment is to incorporate the Convention rights, the HRA in its current format is the manifestation of this commitment in a peace treaty and International Agreement between two sovereign states – the UK and Republic of Ireland. Any attempt to resile from the duty to '*take into account'* the Strasbourg jurisprudence or fundamentally alter the operation of the Human Rights Act is in our opinion a violation of this peace treaty and the UK's international obligations. Incorporating the Convention rights into domestic legislation is not simply the replication of the text of the convention rights in domestic law but also an undertaking to incorporate the jurisprudence and linkages to the ECtHR as well.

The incorporation of the ECHR via the Human Rights Act has become a significant pillar of the human rights architecture of the Agreement and the wider peace process. Binding the Assembly and other public bodies to act in accordance with Convention rights has been an important mechanism for insuring compliance with key human rights standards and a mechanism for individuals to seek redress for abuses of individual rights. One example of the pivotal role that the HRA has played within the peace process is its centrality to policing reform. The revised policing framework in Northern Ireland has placed HRA compliance at its core. One of the key functions of the Northern Ireland Policing Board, as set out in s3(3)(b)(ii) of the Policing (Northern Ireland) Act 1998, is to monitor compliance with the Human Rights Act 1998. The PSNI Code of Ethics, provided for under s52 of the same Act is also designed around the framework of the ECHR as provided for by the HRA 1998.[5]

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[2] The Agreement 1998, Section 3.5
[3] Ibid, Section 3.5(b)
[4] Ibid, Section 6.2
[5] For further information on the PSNI adoption of the Convention rights in the new policing structures our conference report 'The Impact of the Human Rights Act Northern Ireland' available at http://www.humanrightsconsortium.org/wp-content/uploads/2017/04/The-Impact-of-the-HRA-in-Northern-Ireland-Conference-Report-1.pdf provides key insights from the then Chief Constable of the PSNI, Pg 15.

In addition, the adoption of the HRA had a strong perceptual impact on a society in Northern Ireland that was emerging from thirty years of conflict which had its origins in community divisions and a range of discriminatory actions and inequalities. For the new power sharing institutions to work, members of the public who voted for the Agreement needed to be confident that neither political side within the new power sharing structures would be capable of exercising power in a discriminatory manner. Provisions like the HRA have played a key role in providing that confidence. Indeed, it is largely because of this central role in our peace process that public opinion in Northern Ireland is firmly supportive of the Human Rights Act in its current format. Over 85% of the population in Northern Ireland feel that the HRA is either good or very good for Northern Ireland and as such any efforts to amend the HRA would be clearly counter to the wishes of the wider community here.[6]

These levels of support are only possible due to the distinct nature of how the HRA operates. In particular the requirement in Section 2 of the HRA to 'take into account' ECtHR jurisprudence. This link with the Strasbourg judgments twinned with the continuing ability to proceed with a case to the ECtHR itself, provided a supra-national confidence building safeguard for those sections of the community in Northern Ireland who continue to be sceptical about the role of Stormont or Westminster in the protection of rights locally. To undermine or remove these important safeguards would be a direct violation of both the spirit and practical application of the Belfast/Good Friday Agreement.

In addition, the Northern Ireland Assembly is currently undertaking a process to consider the creation of a Bill of Rights for Northern Ireland via an Assembly Ad-Hoc Committee[7] process as established under the New Decade, New Approach agreement.[8] This commitment stems from the human rights safeguards established in the Belfast/Good Friday Agreement. The obligation under the Agreement in this regard is to consider 'rights supplementary to those in the European Convention on Human Rights'.

> 'These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland'[9]

The development of a local Bill of Rights for Northern Ireland remains one of the key public and civil society demands emanating from the peace process and whilst yet undelivered it remains an integral part of the new agreement that re-established the power sharing executive. The Convention rights are the floor on which the additional Bill of Rights is to be developed, as the Agreement clearly states that the Convention itself should form the basic starting point of the new Bill of Rights. Any attempt to undermine the Convention rights as they currently apply in Northern Ireland would also risk undermining this vital element of the peace agreement given the centrality of the ECHR and the HRA to its realisation.

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[6] Attitudes to Human Rights in Northern Ireland: Polling Data http://www.humanrightsconsortium.org/human-rights-unite-northern-ireland/

[7] http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/ad-hoc-committee-on-a-bill-of-rights/

[8] New Decade, New Approach, January 2020 and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade__a_new_approach.pdf

[9] The Agreement 1998, Section 4

Council of Europe

Article 3 of the Statute of the Council of Europe states that: '*Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms*'.[10]

The Charter does not mention the Convention directly, but it should be noted that the Conventions full title is the "European Convention for the Protection of Human Rights and Fundamental Freedoms", suggesting that the Convention is the main mechanism for protecting these principles from within the Statute.

The Council of Europe may therefore find issue with any amendment to the domestic application of the Convention and rule that it violates Article 3 of the Statute of the Council of Europe, particularly if those measures are interpreted as having regressed upon existing human rights standards.

Questions

Theme One:

a) How has the duty to "take into account" ECtHR jurisprudence been applied in practice? Is there a need for any amendment of section 2?

The duty to take into account the ECtHR jurisprudence has clearly had a significant positive impact on the protection of rights in Northern Ireland. By way of example, in a 2010 case Debbie Morrison challenged the lawfulness of elements of the Police Service of Northern Ireland Reserve (Injury Benefit) Regulations (Northern Ireland) 2006 on the grounds that it was discriminatory as it treated the unmarried partner of a deceased police officer less favourably than it treated a deceased officer's widow, widower or bereaved civil partner. As an unmarried partner of a deceased PSNI Officer Ms Morrison was denied benefits under the Regulations. There were clear linkages in the judgment where the court and the parties to the case had drawn upon important ECtHR jurisprudence both to argue against and in support of the Regulations.[11] The court eventually found that there had been a violation of Ms Morrison's convention rights as the Regulations were deemed incompatible with Art 1 First Protocol when read with Art 14 and viewed that it was no longer reasonable not to have removed the discrimination on the grounds of marital status inherent in the eligibility criteria.

Other examples where access to Convention rights have extended the range of rights and protections available in Northern Ireland include the case taken by the Northern Ireland Human Rights Commission (NIHRC) which found that the law on the availability of abortion services in Northern Ireland were incompatible with article 8 of the Convention.[12]

Another case taken by the NIHRC found the Adoption Northern Ireland Order 1987 to be discriminatory in breach of Articles 8 and 14 of the Convention. Both cases considered substantive

[10] Statute of the Council of Europe 1949, Chapter II, Article 3

[11] For instance - Lindsay-v-United Kingdom Comm Dec 1/11/86 DR 49, Shackell v UK (dec) no. 45851/99, 27 April 2000, Burden v UK [2008] 47 EHRR 38, and Rasmussen v Denmark (1984).

[12] In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland) Reference by the Court of Appeal in Northern Ireland pursuant to Paragraph 33 of Schedule 10 to the Northern Ireland Act 1998 (Abortion) (Northern Ireland)

points from the case law of the ECtHR and have made significant impacts on the enjoyment of rights in Northern Ireland.[13]

Northern Ireland cases at the ECtHR have also been to the forefront in developing the case law surrounding article 2 and 3 compliance by public authorities in the UK. Particularly evidenced in cases like McCann and Others v UK 1995, Jordan v UK, Kelly and Others v UK, McKerr and Others, v UK and Shanaghan v UK in 2001, McShane v UK in 2002 and Finucane v UK in 2003.

This duty in Section 2 of the Human Rights Act to "take into account" ECtHR jurisprudence has worked well in practice. Placing a statutory duty on courts to 'take into account' the jurisprudence of the ECtHR has meant that determinations by UK Courts in relation to Convention rights have been considered within the context of the wider regional approach and responses to potential breaches of the ECHR.

Domestic court judgments that have engaged Convention rights via the HRA have been exposed to and considered similar or related approaches adopted at the ECtHR level. This has allowed for a level of consistency to emerge between the jurisprudence of the ECtHR and domestic UK Courts in the adjudication of cases concerning Convention rights. In our view such an approach is entirely justified and consistent given the role of the UK as a signatory/High Contracting Party to the Convention and efforts to ensure a degree of legal consistency in the human rights protections and remedies available across all the nations that have signed up to the ECHR. We would be concerned if ECtHR jurisprudence were not taken into account that an unacceptable divergence may take place between the application of the Convention rights in the UK and that of the ECtHR. This in turn may lead to an increased number of cases domestically or at Strasbourg and a heightened sense of uncertainty in the access of individuals to existing rights.

If the section 2 duties to take into account the ECtHR case law was changed or removed we would also be concerned about the status of judgments that have been made under that section's provisions in the intervening twenty years since the HRA came into effect. We believe that legal certainty would be severely compromised, and this would be destabilising to the rule of law and the status of the HRA and the Convention rights.

b) When taking into account the jurisprudence of the ECtHR, how have domestic courts and tribunals approached issues falling within the margin of appreciation permitted to States under that jurisprudence? Is any change required?

We do not believe that any change is required in this regard. The courts have been adept at considering both the margin of appreciation afforded the UK and the duties of the court to protect Convention rights.

A useful example of the courts approach to the margin of appreciation is the 2018 Supreme Court judgment in a case taken by Siobhan McLaughlin from Northern Ireland who successfully used the HRA to challenge her exclusion from access to Widowed parent's allowance (WPA). A majority of the Supreme Court allowed the appeal and made a declaration that section 39A of the WPA (which stated that the widowed parent can only claim the allowance if he or she was married to or the civil partner of the deceased) was incompatible with article 14 of the ECHR read with article 8, insofar as it precludes any entitlement to WPA by a surviving unmarried partner of the deceased.[14]

[13] The Northern Ireland Human Rights Commission's Application [2012] NIQB 77

[14] In the matter of an application by Siobhan McLaughlin for Judicial Review (Northern Ireland) [2018] UKSC 48, 30 August 2018 https://www.supremecourt.uk/cases/uksc-2017-0035.html

In reaching their decision the Supreme Court highlighted the prevailing jurisprudence from the ECtHR in these maters which was the Stec v United Kingdom[15] judgment which reinforced the very wide margin of appreciation the UK and other states had in deciding upon issues of social security benefits despite the clear differences in the treatment of men and women regarding their retirement age in that case. Additionally, Shackell v United Kingdom[16] significantly reinforced the ECtHR view that the UK was within its margin of appreciation on these issues as it had rejected an application taken over the failure to pay widowed Mother's Allowance on the basis that the applicant and her late partner were not married.

The Supreme Court in this instance however was able to consider both the margin of appreciation afforded the UK, the ECtHR jurisprudence and take its own decision on the interpretation of the facts that moved beyond the current ECtHR judgments in such cases. In its view the exclusion of Ms McLaughlin was not judged to be a proportionate means of achieving the legitimate aim of privileging marriage as it denied Ms McLaughlin and her children the benefit of her partners benefits contributions. This is perhaps both an example of the consideration of ECtHR jurisprudence in the courts work under a section 2 duty, the practical application of the margin of appreciation, but also the ability of domestic UK courts not to be bound by ECtHR jurisprudence if the courts seek to advance and develop on the floor that is that body of law. In this way the margin of appreciation has been both respected and utilised as a mechanism for the UK to move beyond its limitations to the benefit of those in the UK.

c) Does the current approach to 'judicial dialogue' between domestic courts and the ECtHR satisfactorily permit domestic courts to raise concerns as to the application of ECtHR jurisprudence having regard to the circumstances of the UK? How can such dialogue best be strengthened and preserved?

We believe that the process of 'judicial dialogue' that has taken place between the ECtHR and domestic UK Courts like the Supreme Court has been constructive and positive in nature and has been a mutual process of ensuring clarity and understanding of respective positions and judgments. This dialogue has been particularly important in circumstances where judgments have been controversial or contested such as the imposition of whole-life prison sentences[17] and debates around the law on prisoners voting rights. [18]

Theme Two:

a) Should any change be made to the framework established by sections 3 and 4 of the HRA?

In particular:

i. Are there instances where, as a consequence of domestic courts and tribunals seeking to read and give effect to legislation compatibly with the Convention rights (as required by section 3), legislation has been interpreted in a manner inconsistent with the intention of the UK Parliament in enacting it? If yes, should section 3 be amended (or repealed)?

[15] Stec v United Kingdom (2006) 43 EHRR 47
[16] Shackell v United Kingdom, (Application No 45851/99).
[17] Hutchinson v UK (2015) 61 EHRR 13.
[18] Hirst v UK (No 2) (2006) 42 EHRR 41 (GC).

We are not aware of any examples of where section 3 has been applied in a manner that is inconsistent with the intention of the UK Parliament. Through the Human Rights Act the UK Parliament clearly signalled its contentment with giving the courts this important role in reading and giving effect to legislation in a way which is compatible with Convention rights.

In assessing the consistency of Section 3 powers with the continuing intentions of Parliament the section should also be interpreted in conjunction with section 19 of the HRA. The UK parliament having provided the Section 3 powers also placed Ministers of the Crown under a duty to make Article 19 statements of compatibility when presenting Bills in either house. These statements outline whether in the Ministers opinion the proposed legislation is compatible with Convention rights or alternatively state that he is unable to give such a reassurance. It is therefore reasonable to conclude that the intention of Parliament, in including both sections 3 and 19, is that a convention compliant interpretation of the legislation is the express intention of Parliament.

Indeed, current Cabinet Office guidance stipulates that should a Bill be altered or amended following debate in Parliament to the extent that a Minister considered the provisions of the Bill to no longer meet the standards required for a section 19 statement that 'it would be a breach of the Ministerial Code to proceed towards Royal Assent without either amending the provisions or informing Parliament of the issue.'[19]

We believe that clearly the intended role of Section 3 is to give further effect to Parliaments intention that legislation should be compatible with Convention rights, are unaware of any example of these powers being exercised in a manner that is inconsistent with that approach and therefore believe that section 3 should not be amended or repealed.

ii. If section 3 should be amended or repealed, should that change be applied to interpretation of legislation enacted before the amendment/repeal takes effect? If yes, what should be done about previous section 3 interpretations adopted by the courts?

We do not support any amendment or the repeal of Section 3 of the Human Rights Act. Without Section 3 the remedies available to litigants under the Act would be limited and an over reliance on the alternative Section 4 powers may risk over politicising many of the cases that arise under the Human Rights Act.

iii. Should declarations of incompatibility (under section 4) be considered as part of the initial process of interpretation rather than as a matter of last resort, so as to enhance the role of Parliament in determining how any incompatibility should be addressed?

This question seems to suggest that Parliament has not already been given a role in attempting to ensure legislation is convention compliant when in fact their role in this regard is already a central one. The process of legislative development and approval through both houses of Parliament is the first stage in challenging and testing whether there are likely inconsistencies or incompatibilities with draft legislation. To create circumstances in which declarations of incompatibility are front loaded as a means of addressing incompatibilities ignores the important role that Parliament has already played in this regard.

Such an approach would also only be achievable if Section 3 were removed or amended, which we have already indicated we would not support. In the circumstances that it was removed or amended

[19] Cabinet Office - Guide to Making Legislation, July 2017, Section 12.24 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/645652/Guide_to_Making_Legislation_Jul_2017.pdf

it is likely that access to Article 13 rights to effective remedies would also be at risk as a declaration of incompatibility offers no specific remedy to individual litigants. In these circumstances it is likely that litigants would be forced to seek redress via appeals to the Strasbourg Court. These impacts would be unwelcome as it would remove the possibility of domestic remedies, force litigants into pursuing potentially costly and time-consuming appeals outside the UK and increase the role of the Strasbourg court at the expense of domestic courts.

The current approach under section 3 sees it utilised as the 'principal remedial measure' for dealing with legislation that creates questions of compatibility with Convention rights while Section 4 powers to issue declarations of incompatibility should only be 'a measure of last resort'.[20] It is more appropriate that where there are inconsistencies with legislation and the Convention rights, that Section 3 be utilised in the first instance to attempt to remedy the inconsistency.

During the passage of the Human Rights Act through Parliament the Lord Chancellor outlined the clear expectation about the balance to be struck between section 3 and 4 powers with the remedial powers of section 3 taking a preeminent position where possible.

> 'the courts are not to set aside primary legislation under the Bill, but the principle of statutory construction is a strong alternative. It will be unlawful for public authorities to act in a way which is incompatible with the convention rights and that also is a strong and far-reaching provision. Taken together, those measures provide for the convention rights to have a great effect in our domestic law. I go further; in 99 per cent. of the cases that will arise, there will be no need for judicial declarations of incompatibility.'[21]

In this balance there is still clearly a role for Parliament in two ways. Should the number of inconsistencies be too great to be able to be read and given effect in a way which is compatible with Convention Rights then the courts will be required to issue a declaration of incompatibility. In which case it falls to Parliament to decide whether to repeal or amend the legislation in question. The second mechanism is following a decision by a court using the section 3 powers to read and give effect to the legislation in a way that is ECHR compliant. If Parliament disagrees with the interpretation of the courts then it is open to them to override that interpretation by amending the legislation and reinstating the specific incompatibility.

We therefore feel that the appropriate balance has been struck between the responsibilities and roles of Parliament and the Courts, that the section 3 powers are essential to maintaining a functional interpretation of existing law in line with Convention rights and that this current approach is in line with the original intentions of Parliament when passing the legislation. We therefore feel that no changes are necessary.

b) What remedies should be available to domestic courts when considering challenges to designated derogation orders made under section 14(1)?

One option would be to ensure that there are appropriate legal avenues for challenging any designated derogation orders and ensuring that such orders must be compatible with Article 15 of the ECHR. The changes currently being proposed in the Overseas Operation Service (Personnel and Veterans) Bill would require the Government to consider whether to derogate from the HRA in

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[20] Lord Steyn in Ghaidan v Godon-Mendoza [2004] UKHL 30, [2004] 2 AC 557.
[21] Hansard HoL, 5 February 1998, Col 840
https://publications.parliament.uk/pa/ld199798/ldhansrd/vo980205/text/80205-26.htm

certain overseas operations. However, there is no clear mechanism for such a derogation to be challenged in court if deemed incompatible with the Article 15 obligations.

c) Under the current framework, how have courts and tribunals dealt with provisions of subordinate legislation that are incompatible with the HRA Convention rights? Is any change required?

We have no evidence to suggest that the current system for how subordinate legislation interacts with the HRA Convention rights is problematic and would therefore find no cause to suggest any changes to the current system.

d) In what circumstances does the HRA apply to acts of public authorities taking place outside the territory of the UK? What are the implications of the current position? Is there a case for change?

We are not in favour of the HRA being amended in a way which would allow the UK Government to derogate from the ECHR in operations overseas by the UK military. The protections provided to UK military personnel operating overseas by the HRA have been important protections that we wish to see retained.[22]

e) Should the remedial order process, as set out in section 10 of and Schedule 2 to the HRA, be modified, for example by enhancing the role of Parliament?

We believe that the current parliamentary scrutiny of remedial orders as conducted by the Joint Committee on Human Rights is already an effective approach that balances the need for Parliamentary involvement with appropriate legal expertise.

Conclusion

We do not believe that any changes to the current operation of the HRA and access to the Convention rights as outlined in this call for evidence should be made by the Government. We feel that this review is the latest attempt by the Government to undermine the operation of the Human Rights Act and limit access to Convention rights for individuals living in the UK. This political attack on the HRA is not reflective of the support that the legislation enjoys across all communities in Northern Ireland and is at odds with the central role of this legislation within our peace process and the UK Governments role as co-guarantor of that process.

Part of this attack on the HRA is rooted in a false debate about 'judicial activism' and upholding Parliamentary sovereignty. In fact, the role of courts in judging cases under the HRA remains solidly rooted in upholding the rule of law and Parliamentary Sovereignty is as strong as it has ever been.

It was Parliament itself that instructed courts to take into account the jurisprudence of the ECtHR and apply interpretative provisions to existing legislation under Section 3. Indeed, the relationship between Parliament and the Judiciary through the Human Rights Act underpins an important emphasis on human rights and the principles of the rule of law and the distinct roles played by different bodies within our system of governance. Under the HRA both the Parliament and Judiciary work in a symbiotic manner to be responsive to each other's actions and hold each other to account as part of a process of 'democratic dialogue' between branches of government. Through the HRA a distinct balancing act is achieved between the retention of the principle of 'Parliamentary Sovereignty' and the powers invested in the courts to uphold the 'Rule of Law. While the Section 6 powers of the Act make it unlawful for public authorities to violate Convention rights (except where

[22] See Smith v MoD, [2013] UKSC 41; [2014] AC 52.

necessary under an Act of Parliament) the restriction on the courts under Section 4 to make a 'declaration of incompatibility' (rather than powers to strike down legislation) represent a clever balance between the role of Parliament and the Judiciary.

This approach ultimately retains the principle of 'Parliamentary Sovereignty' because it is in fact Parliament that has the final say on whether legislation is reformed to be compatible with Convention rights and it was Parliament who originally made the decision that this was the process by which legislation could be reviewed for Convention compliance by the courts. Therefore, Parliamentary authority is retained by virtue of this process and Parliament can, if it wishes, pass legislation that sits at odds with the Convention in the opinion of the courts. The judiciary can also apply the positively framed power under Section 3 of the Act to ensure that legislation is interpreted in a manner that upholds the convention rights unless this is specifically contradictory to the intentions of the legislator.

On the other side of this dialogue Parliament has similarly bound itself into a system that requires greater scrutiny of legislation for human rights compliance. Under Section 19 of the Act Ministers are required, when introducing legislation into either of the Houses of Parliament, to make a declaration that in their opinion the legislation is compatible with the Convention. While the role of the Joint Committee on Human Rights (JCHR) is another mechanism which ensures that Parliament plays a central role in human rights scrutiny.

This dialogue, where Parliament uses its own sovereignty to impose mechanisms of scrutiny upon its own operations and legislative outputs and in turn the courts duty to dissect such legislation or the actions of public authorities for HRA compliance, is a product of Parliamentary Sovereignty rather than a substitute for it.

Rather than attempting to undermine the HRA in this manner the Human Rights Consortium would recommend that the Government exert greater time and resources in promoting, explaining and ensuring rights holders have appropriate access to the protections of the Convention rights in this important legislation.

Instead of changing the HRA in any way we believe that the Government should proceed with existing commitments to advance additional rights. The proposal for a Northern Ireland Bill of Rights emanating from the Belfast/Good Friday Agreement is a primary example. The NIHRC proposals in this regard sought to replicate the HRA rights within the text of a Bill of Rights and allow it to sit alongside a retained HRA. In this way guaranteeing that rights were clearly advanced and leaving no room for retrogression.[23]

We wish the review panel well in its work, but the Human Rights Consortium ultimately believes that this review is unnecessary and would not support any changes to the current operation of the HRA in the terms addressed under this call for evidence.

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[23] A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern, 2008 http://www.nihrc.org/Publication/detail/advice-to-the-secretary-of-state-for-northern-ireland