

IRELAND/IRLAND

- 1) *What mechanisms have been put in place at national level to ensure the compatibility of legislation (whether draft legislation, laws in force or administrative practice) with the Convention? How do these work (whether or not they are systematic, the competent authorities and any consultations – whether optional or mandatory)? What are the advantages of the mechanism chosen?*

Government Departments

The implications of legislative proposals for human rights and the rights protected under the European Convention, are taken into account at an early stage by Government Departments when developing policy and proposals. Where Government Departments have Legal Divisions and units, lawyers working in those Divisions and Units can provide advice to their Department in this regard.

In the course of preparing draft legislation Government Departments should use the mechanism of a Regulatory Impact Assessment which (depending on the context of the legislation) may include a human rights focus. A Regulatory Impact Assessment is a tool used when a new regulation or regulatory change is being considered to address particular policy issues, in order to explore alternative options to the use of regulation. The Regulatory Impact Assessment identifies the objectives to be achieved and examines the possible impacts of the various options available. In relation to the latter, the relevant Government Department assesses whether the proposals impinge disproportionately on the rights of citizens. Where significant human rights impacts are identified, a high level of analysis of the proposed regulation is required. In examining such impacts, consideration is given to the European Convention on Human Rights.

Attorney General's Office

When the Attorney General and his/her Office are advising on proposals for draft legislation or responding to formal memoranda for Government in relation to such proposals, the State's obligations under the European Convention on Human Rights, as incorporated into Irish law at a sub-constitutional level by the European Convention on Human Rights Act 2003 (as amended), are taken into account. The Office also advises on the human rights and ECHR aspects of public law litigation against the State and those advices and the judgements of the courts on compatibility with the ECHR are taken into account when advising on legislation.

The Houses of the Oireachtas (the National Parliament)

Furthermore, the Houses of the Oireachtas (the National Parliament) establish Parliamentary Committees to discuss laws and draft laws which will include a human rights perspective. In the past public hearings have been held by such committees with a focus on the human rights compliance of proposed legislation. Further, the Oireachtas maintains a research capacity to inform Oireachtas members of human rights developments in the process of pre-legislative scrutiny.

Pre-legislative scrutiny is where Parliament, through its committees, scrutinises General Schemes of draft legislation. Ministers are required to forward the General Scheme of a Bill to the relevant Committee for scrutiny. In the exceptional circumstance where a Minister does not do so, he/she must explain to the House (of Parliament) why this was not done. The Committees are empowered (but not obliged) to consider the General Scheme. Pre-legislative scrutiny allows extensive engagement of the public in law-making as it enables parliamentary committees to consult civil society and advocacy groups, stakeholders and experts. This process takes place regularly. For instance, of the approximately 45 General Schemes published between March 2011 and October 2014, there were 36 cases of pre-legislative scrutiny by the Joint Committees of the Houses of the Oireachtas.

Irish Human Rights and Equality Commission

The Irish Human Rights and Equality Commission (IHREC), established by the Irish Human Rights and Equality Commission Act 2014 in accordance with the Paris Principles, keeps draft and enacted legislation under review to make sure it meets with human rights and equality standards. IHREC may:

- A) examine any legislative proposal, either of its own volition or on being so requested by a Minister of the Government, and report its views on any implications for human rights;
- (A) list of recent observations is available at the following link: <http://www.ihrec.ie/policy/legislativeobse.html>)
- B) review the effectiveness of any enactments relating to the protection and promotion of human rights;
- C) review the working or effect of equality legislation and make such recommendations as it sees fit following such review;
- D) receive complaints in relation to human rights compliance including legislation and administrative practices;
- E) contribute to consultation initiatives undertaken by Government Departments, Oireachtas (Parliamentary) Committees, statutory bodies and agencies in order to promote human rights in law, policy and practice, such as through producing submissions on policy and legislative reform;
- F) conduct an inquiry, either of its own volition or on being so requested by the Minister for Justice and Equality, if it considers that there is evidence in respect of any body (whether public or otherwise) institution, sector of society, or geographical area, of a serious violation of human rights or a systemic failure to comply with human rights and the matter is of grave public concern;
- G) serve a human rights compliance notice on a person, in circumstances where the Commission is satisfied that he/she has violated or is violating human rights, specifying the act or omission constituting the violation and requiring the person on whom it is served not to commit or to cease committing, as the case may be, the act or omission concerned;
- H) hear representations from a person on whom a human rights compliance notice is served;
- I) record human rights compliance notices on a register available for inspection by members of the public;
- J) grant assistance to a person who has instituted or wishes to institute legal proceedings involving law or practice relating to the protection of human rights;
- K) institute proceedings in any court of competent jurisdiction for the purpose of obtaining relief of a declaratory or other nature in respect of any matter concerning the human rights of any person or class of persons;
- L) assist public bodies to perform their functions in a manner consistent with the protection of the human rights of their members, staff and the persons to whom they provide services, by giving guidance to and encouraging the public bodies in relation to developing policies of, and exercising, good practice and operational standards in relation to, human rights;
- M) review the performance by public bodies of their functions, having regard to the need to protect the human rights of their members, staff and the persons to whom they provide services, and make a report of the review to the Minister for Justice and Equality, making such recommendations as the Commission thinks appropriate. In addition, the Commission must cause a copy of the report to be laid before each House of the Oireachtas (the National Parliament).

Since the introduction of the Irish Human Rights and Equality Commission Act 2014, it is incumbent on public bodies, having regard to the need to eliminate discrimination, promote equality of opportunity, and protect the human rights of their members, staff and the persons to whom they provides services, to set out in a manner that is accessible to the public in their strategic plans (howsoever described) an assessment of the human rights issues they believe to be relevant to the functions and purpose of the body and the policies, plans and actions in place or proposed to be put in place to address those issues. Moreover, they must report in a manner that is accessible to the public on developments and achievements in that regard in their annual reports (howsoever described).

The Commission has a specific role (section 42(3) and (4) of the Act) of advising and assisting public bodies in performing their functions in a manner that is consistent with these obligations, including by issuing guidelines or preparing draft statutory codes of practice.

Conclusion

The involvement of numerous stakeholders means that legislative proposals and existing laws and administrative practices can be examined from different points of view and this increases the chances of identifying elements that may be incompatible with the European Convention on Human Rights.

- 2) *What obstacles have been encountered in establishing or applying these mechanisms? How have these been overcome?*

No obstacles have been encountered in the operation of the above mechanisms.

- 3) *Is there any assessment (or planned assessment) of the appropriateness and effectiveness of the mechanisms in question? If so, how does this work? What obstacles have been encountered in setting up or carrying out such an assessment?*

There are no assessments or planned assessments of the appropriateness and effectiveness of the mechanisms at present.