



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

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# Human Rights and Equality Proofing of Public Bills

Nothing in this paper constitutes legal advice or should be used as a substitute for such advice.

## 1 Introduction

This paper outlines the procedures by which legislation made by the Northern Ireland Assembly is scrutinised on human rights and equality grounds. The paper is written in the context of the Assembly and Executive Review Committee's (A&ERC) Review of Petitions of Concern.

The Committee has previously requested and been presented with information on the existence and operation of committees that examine conformity with human rights and equality issues in other legislatures in the UK and Ireland.<sup>1</sup>

## 2 Equality and Human Rights Scrutiny and the Legislative Process for Public Bills

The Northern Ireland Assembly is a creature of statute, its operation being provided for in the Northern Ireland Act 1998<sup>2</sup> (the NIA 1998). The Standing Orders of the Northern Ireland Assembly<sup>3</sup> detail the procedures which regulate the way the Northern Ireland Assembly carries out its business.

Fundamentally, the Northern Ireland Assembly may only make provisions within legislative competence. Pursuant to Section 10 (1) of the NIA 1998, Standing Orders shall ensure that a Bill is not introduced in the Assembly if the Speaker decides that any provision of it would not be within the legislative competence of the Assembly. Section 6 (1) of the NIA 1998 states that a provision of an Act is not law if it is outside the legislative competence of the Assembly and Section 6 (2) sets out the circumstances in which provisions will fall outside legislative competence:

### **6 Legislative competence.**

*(1) A provision of an Act is not law if it is outside the legislative competence of the Assembly.*

*(2) A provision is outside that competence if any of the following paragraphs apply—  
(a) it would form part of the law of a country or territory other than Northern Ireland, or confer or remove functions exercisable otherwise than in or as regards Northern Ireland;*

*(b) it deals with an excepted matter and is not ancillary to other provisions (whether in the Act or previously enacted) dealing with reserved or transferred matters;*

*(c) it is incompatible with any of the Convention rights<sup>4</sup>;*

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<sup>1</sup> Assembly and Executive Review Committee (14 January 2014) OFFICIAL REPORT (Hansard) Petitions of Concern: Briefing from Northern Ireland Assembly Research and Information Service [http://www.niassembly.gov.uk/Documents/Official-Reports/Assembly-Executive-Review/2013-2014/140114\\_Petitionsofconcern\(RalSe\).pdf](http://www.niassembly.gov.uk/Documents/Official-Reports/Assembly-Executive-Review/2013-2014/140114_Petitionsofconcern(RalSe).pdf)

<sup>2</sup> Northern Ireland Act 1998: <http://www.legislation.gov.uk/ukpga/1998/47/contents>.

<sup>3</sup> Standing Orders of the Northern Ireland Assembly: <http://www.niassembly.gov.uk/Documents/Standing-Orders/Standing-Orders-121113.pdf>.

<sup>4</sup> This refers to the European Convention on Human Rights: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).

- (d) it is incompatible with EU law<sup>5</sup>;*
- (e) it discriminates against any person or class of person on the ground of religious belief or political opinion;*
- (f) it modifies an enactment in breach of section 7.*

Given the provisions in Section 6 (2) (c) (d) and (e), it is clear that equality and human rights considerations underpin the consideration of legislative competence of the Assembly. Significant overlap, however, exists between these areas.<sup>6</sup> This, together with the intermingling of references to equality and human rights in the Assembly's Standing Orders, means that it is not feasible to present individual processes for equality and human rights proofing of Public Bills.<sup>7</sup>

Whilst this paper focuses on those mechanisms which directly refer to human rights, equality or legislative competence, it should be borne in mind that a range of more general powers, duties and responsibilities may also encompass equality and human rights dimensions. References to the Secretary of State's powers in relation to ensuring compliance with the UK's international obligations, for example, might be considered to include compliance with international human rights instruments such as the Convention on the Rights of the Child. By way of further example, the Ministerial Code which sets out the rules and procedures for the exercise of the duties and responsibilities of Ministers and junior Ministers of the Northern Ireland Assembly contains a Pledge of Office which requires Ministers to, amongst other things, 'serve all the people of Northern Ireland equally, and to act in accordance with the general obligations on government to promote equality and prevent discrimination'.<sup>8</sup>

### **Pre-Legislative Scrutiny**

A number of legal provisions seek to ensure that consideration of human rights and equality issues is integral to the policy and pre-legislative development phase of any Bill.

Under Section 75 of the NIA 1998, Northern Ireland Departments are required, in carrying out their functions, to have due regard to the need to promote equality of opportunity on nine grounds:

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation, between men and women generally,
- between persons with a disability and persons without and

<sup>5</sup> This refers to legislation in the European Union, which includes a range of Directives relating to equality. See Research and Information Service Research Paper 75/11 *Equality and Human Rights Legislation in Northern Ireland: A Review*, August 2011: <http://www.niassembly.gov.uk/Documents/RalSe/Publications/2011/OFMdfM/7511.pdf>.

<sup>6</sup> And both of which potential overlap compatibility with EU law

<sup>7</sup> SO 34 for example refers to 'human rights (including rights under the European Convention on Human Rights)' whilst SO 35 refers to 'equality requirements (including rights under the European Convention on Human Rights)'

<sup>8</sup> <http://www.northernireland.gov.uk/index/your-executive/ministerial-code.htm>

- between persons with dependents and persons without.

In fulfilling this duty, departments are required to carry out equality proofing of all policy (including legislation). This is achieved through ‘screening’ and ‘equality impact assessments’ (EQIA) processes. The Equality Commission’s revised guide to the Statutory Duties<sup>9</sup> for Public authorities specifies that *the Section 75 statutory duties apply to the development of legislative proposals and state that ‘m]emoranda to the Northern Ireland Assembly Committees should confirm that the legislative proposal has been subjected to the requirements of the Section 75 statutory duties’.*

As the Human Rights Act 1998 (the HRA 1998) places a duty on Public authorities not to undertake actions in contravention of the European Convention on Human Rights,<sup>10</sup> a Minister is implicitly bound to human rights compliance when introducing legislation.

Furthermore, pursuant to Section 24 of the NIA 1998, a Minister or Northern Ireland Department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act is incompatible with Convention rights or Community law.

The Assembly’s Statutory Committees may consider equality and human rights issues as part of any pre-legislative scrutiny and, in addition, Assembly Standing Orders provide specific mechanisms for the purposes of obtaining advice on human rights and equality issues on a *draft Bill or proposal for legislation, once it has been published for Public consultation.*<sup>11</sup> These mechanisms can also be invoked after the introduction of a Bill and so are discussed in more detail later in this paper.

### **Passage of Public Legislation**

The introduction of a Bill in the Assembly is accompanied by a number of procedural requirements which address the legislative competence of the Bill, which, as has been stated, encompasses human rights and equality considerations.

A Minister in charge of a Bill is required, on or before its introduction, to make a statement to the effect that in his or her view the Bill is within the legislative competence of the Assembly.<sup>12</sup>

In the case of a Private Member’s Bill, the Member in charge of the Bill is likewise required, when submitting the text of the Bill to the Speaker, to also submit a statement in writing to the effect that in his or her view the Bill would be within the legislative competence of the Assembly.

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<sup>9</sup> Equality Commission for Northern Ireland *Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities* April 2010

<http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>

<sup>10</sup> Human Rights Act 1998, Section 6:

<http://www.legislation.gov.uk/ukpga/1998/42/crossheading/public-authorities>.

<sup>11</sup> See Standing Orders 34 and 35

<sup>12</sup> Section 9 (1) of the NIA 1998

A Minister or Member who proposes to introduce a Bill is required to submit the full text of it to the Speaker not fewer than seven days (excluding Saturdays and Sundays) before the date proposed for the introduction of the Bill in the Assembly.

Standing Order 41 states that Public Bills on introduction shall be accompanied by an explanatory and financial memorandum detailing as appropriate:-

- (a) *the nature of the issue the Bill is intended to address;*
- (b) *the consultative process undertaken;*
- (c) *the main options considered;*
- (d) *the option selected and why;*
- (e) *the cost implications of the proposal/s.*<sup>13</sup>

It has been observed that whilst there is no requirement to include human rights statements in explanatory memoranda accompanying Bills, they do tend to contain statements on human rights compliance, albeit that these statements tend to very brief and contain only minimal analysis.<sup>14</sup> The same observation would seem to be true of the statements on Equality Impacts/Section 75 duties which accompany explanatory memoranda.

Criticisms of the extent to which explanatory notes address compatibility with Convention rights have been made in the Westminster context. Section 19 of the HRA 1998 requires that, for every UK government Bill, the Minister in charge in each House of Parliament must make a statement that, in his or her view, the Bill's provisions are compatible with the Convention rights. Alternatively, if he or she is not able to provide that personal assurance, he or she must state that, nevertheless, the Government wishes the House to proceed with the Bill. Recent guidance for UK Government Departments states that explanatory notes should record not only the fact that a Section 19 statement has been made and what it was, but also give further detail of the most significant Convention issues thought to arise on the Bill, together with the Minister's conclusions on compatibility.

The explanatory notes must also give further details of the most significant human rights issues thought to arise from the Bill, as the Government has made a commitment to this effect...This assessment of the impact of the Bill's provisions on the Convention rights should be as detailed as possible setting out any relevant case law and presenting the Government's reasons for concluding that the provisions in the Bill are Convention compatible.<sup>15</sup>

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<sup>13</sup> Standing Orders as amended 16 October 2012, 41, available at:

<http://www.niassembly.gov.uk/Assembly-Business/Standing-Orders/Standing-Orders/#41>

<sup>14</sup> Colin Caughey and David Russell (forthcoming), 'Devolution and Human Rights in the Northern Ireland Assembly' in Hayley Hooper, Murray Hunt and Paul Yowell (eds.), *Parliaments and Human Rights*, Oxford: Hart Publishing.

<sup>15</sup> Cabinet Office (July 2013) Guide to Making Legislation

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/210917/Guide\\_to\\_Making\\_Legislation\\_July\\_2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210917/Guide_to_Making_Legislation_July_2013.pdf)

The guidance cites the explanatory notes to the Criminal Justice and Immigration Bill, which received Royal Assent in May 2008 as an illustration of a ‘...comprehensive approach to human rights analysis that has been noted with approval by the Joint Committee on Human Rights’.

In the Assembly, having received the full text of the Bill, the Speaker is required to ensure that a Bill is not introduced if he decides that any provision of it would not be within the legislative competence of the Assembly.<sup>16</sup> As soon as reasonably practicable after introduction of Bill in the Assembly, the Speaker must send a copy to the Northern Ireland Human Rights Commission (NIHRC).<sup>17</sup>

The NIHRC takes the following action on receipt of a Bill from the Speaker:<sup>18</sup>

- Considered on receipt from the Speaker
- Examined, as appropriate and where resources permit, according to domestic and international obligations, hard and soft law, and international and domestic jurisprudence
- Advice drafted and endorsement by the Commission
- Engagement with the Assembly, usually at Committee Stage

Once a Bill has been agreed by the Assembly at Second Stage, it is referred to the appropriate statutory committee and this stage of the legislative process affords an opportunity for detailed scrutiny of the provisions contained within a Bill, including consideration of equality and human rights issues. This consideration frequently involves engagement between a statutory committee and the relevant statutory equality bodies.

Human rights compliance, whilst a cross-cutting responsibility across all government departments, is ultimately the responsibility of the Office of the First Minister and deputy First Minister (OFMdfM) and therefore falls within the scrutiny remit of the Committee for OFMdfM. All statutory committees, however, will consider equality and human rights issues as part of the detailed consideration undertaken at Committee Stage.

The Assembly Committee for Finance and Personnel, for example, has requested and received written and oral briefing from the NIHRC on its views regarding the compatibility of the Damages (Asbestos-related Conditions) Bill with the European Convention on Human Rights (ECHR).<sup>19</sup>

The NIHRC has also recently attended the Justice Committee in line with its duty to advise the Committee whether in its view a Bill is compatible with human rights. The

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<sup>16</sup> Section 10 (1) NIA 1998 and Standing Order 30 (3)

<sup>17</sup> Standing Order 30 (6)

<sup>18</sup> Information from the Northern Ireland Human Rights Commission 22 January 2014.

<sup>19</sup> [http://archive.niassembly.gov.uk/finance/2007mandate/damages\\_bill/NIHRC.pdf](http://archive.niassembly.gov.uk/finance/2007mandate/damages_bill/NIHRC.pdf)

Bill in question was the Human Trafficking Bill.<sup>20</sup> Similarly, the Equality Commission is regularly asked by Assembly Committees to comment in relation to equality issues arising in draft legislation and at the Committee Stage of the legislative process. A recent example relates to the examination of the Superannuation Bill by the Committee for Finance and Personnel.<sup>21</sup>

In its most recent annual report, the Equality Commission states that it has 'sought to inform the work of government' by providing evidence to Assembly Committees on a number of pieces of proposed legislation.<sup>22</sup> The Welfare Reform Bill; the Superannuation Bill; the Civil Service (Special Advisers) Bill. The Children's Commissioner has also recently provided advice to the Assembly's Justice Committee on potential children's rights issues arising from DNA/fingerprint retention clauses in the Criminal Justice Bill.<sup>23</sup>

In addition to the detailed investigation by a committee described above, the Assembly's Standing Orders (34 and 35) provide additional mechanisms through which advice on equality and human rights issues can be sought.

Under the heading 'Public Bills: Equality Issues', Standing Order 34 allows for debate on a motion that the Assembly refer a Bill to the NIHRC for advice. The first and to date only time that such a motion has been debated took place in October 2012. The motion, which was proposed by Fra McCann MLA and opposed by the Minister for Social Development, was defeated.<sup>24</sup>

Under the heading 'Public Bills: Human Rights Issues', Standing Order 35 enables either the Chair of a statutory committee (or a member of the committee acting on his or her behalf) or any Minister to propose a motion to establish an Ad Hoc Committee on Conformity with Equality Requirements. This Ad Hoc Committee may then function similarly to a statutory committee, examining and reporting on the Bill, or focus solely on conformity with the requirements for equality and observance of human rights.<sup>25</sup>

This provision has been used once when, on the 19 November 2012, the Assembly debated the following Committee Motion tabled by the Chair of the Social Development Committee, Alex Maskey MLA.

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<sup>20</sup> Official Report: Evidence to the Committee for Justice 16 January 2014 - Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill: Northern Ireland Human Rights Commission: [http://www.niassembly.gov.uk/Documents/Official-Reports/Justice/2013-2014/140116\\_HumanTraffickingetcBill\(NIHRC\).pdf](http://www.niassembly.gov.uk/Documents/Official-Reports/Justice/2013-2014/140116_HumanTraffickingetcBill(NIHRC).pdf).

<sup>21</sup> Official Report: Evidence to the Committee for Finance and Personnel 9 May 2012 - Superannuation Bill: Equality Commission for Northern Ireland: [http://www.niassembly.gov.uk/Documents/Official-Reports/Finance\\_Personnel/2011-2012/Superannuation%20Bill%20Equality%20Commission.pdf](http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/2011-2012/Superannuation%20Bill%20Equality%20Commission.pdf).

<sup>22</sup> Equality Commission for Northern Ireland (2013), *Equality Commission for Northern Ireland Annual Report and Accounts for the year ended 31 March 2013*, Belfast: ECNI, p.14: <http://www.equalityni.org/archive/pdf/AnnualReport2013.pdf>.

<sup>23</sup> Official Report: Evidence to the Committee for Justice - Criminal Justice Bill: DNA/Fingerprint Retention Clauses-NICCY Briefing: <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/October-2012/Criminal-Justice-Bill-DNAFingerprint-Retention-Clauses-NICCY-Briefing/>.

<sup>24</sup> Northern Ireland Assembly Debate 22 October 2012: <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-12-13/22-October-2012/>.

<sup>25</sup> This process is shown at Appendix 2.



### Ad Hoc Committee on Conformity with Equality Requirements - Welfare Reform Bill

That, in accordance with Standing Order 35(10)(a) and (b)(i), the Welfare Reform Bill be referred to an Ad Hoc Committee on Conformity with Equality Requirements; and that the Ad Hoc Committee shall consider and report only whether the provisions of the Bill are in conformity with the requirements for equality and observance of human rights.

At the outset of the debate, the Speaker informed Members that a valid petition of concern had been presented and, as required by Standing Order 28, no votes could be held on the motion until the following day. The Speaker went on to explain that:

...because there is a petition of concern to the motion, Standing Order 60(4) now applies. That means that the Question that will be put tomorrow on the motion will automatically become one by which I will ask the House to agree that the Welfare Reform Bill may proceed without reference to an Ad Hoc Committee on conformity and equality requirements. The Question must be passed with parallel consent.<sup>26</sup>

On the 20 November 2012, the postponed vote on the motion to refer the Welfare Reform Bill to an Ad Hoc Committee on Conformity with Equality Requirements was the first item of business. The Speaker again explained that:

...as there is a valid petition of concern, Standing Order 60(4) applies, and the Question will not, therefore, be put on the Committee for Social Development's original motion. Instead, the Question becomes that the Welfare Reform Bill may proceed without reference to an Ad Hoc Committee on Conformity with Equality Requirements.

The vote must be passed with parallel consent. I know that these are complex issues, and I know that when we bring a petition of concern here what it normally does. In fact, the petition of concern being presented actually does the opposite, so it is trying to be as clear as possible to the House and Members.

On a vote, the motion failed to achieve parallel consent and, as the House had therefore rejected the proposal that the Bill may proceed without being referred to an Ad Hoc Committee, the Bill was referred to such a committee. The next item of business established the Ad Hoc Committee.

The Ad Hoc Committee<sup>27</sup> was established to consider only, and to report only, on whether the provisions of the Welfare Reform Bill were in conformity with the requirements for equality and observance of human rights. The Committee for Social

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<sup>26</sup> Official Report (Hansard) Session: 2012/2013 Date: Monday, 19 November 2012

<http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-12-13/19-November-2012/#5>

<sup>27</sup> <http://www.niassembly.gov.uk/Assembly-Business/Committees/Ad-Hoc-Committee-on-Conformity-with-Equality-Requirements-Welfare-Reform-Bill/Reports/Report-on-whether-the-Provisions-of-the-Welfare-Reform-Bill-are-in-Conformity-with-the-Requirements-for-Equality-and-Observance-of-Human-Rights/>



Development suspended its scrutiny of the Bill for the period during which the Ad Hoc Committee undertook its consideration of the Bill.

The Final Report of the Ad Hoc Committee was debated in Plenary on 29 January 2013. In the report the committee noted that it had taken oral evidence and accepted written submissions from a number of representative bodies, including the Equality Commission and the NIHRC. The report also noted, however, that whilst the Committee invited the Equality Unit of OFMdFM to present or give evidence, no official response was received to this request. The Chairperson and Deputy Chairperson of the Ad Hoc Committee did though meet with the Chairperson of the House of Lords and House of Commons Joint Committee on Human Rights to gain an insight into the approach used by that Committee in its scrutiny of Westminster legislation

In the only such review to have been undertaken to date, in 2001-2002 the Committee on Procedures reviewed the legislative process in the Assembly. During the inquiry, the NIHRC raised the notion of establishing a human rights committee in the Assembly, noting that certain human rights mechanisms during the legislative process had not been used. The Committee on Procedures concluded that a recommendation for a human rights committee went beyond the remit of its inquiry but also stated that:<sup>28</sup>

As part of its examination of the existing procedures the Committee reviewed the provisions of Standing Orders 32, 33 and 55 which gave Members the opportunity of requesting formal advice from the NIHRC and of invoking the Ad Hoc Committee on Conformity with Equality Requirements. The Committee concluded that the primary reason for these procedures not having been invoked was that the extent of the human rights proofing of legislation was considered to be sufficiently robust.

Whilst the Committee Stage in the legislative process for Public Bills requires Committees to undertake a detailed investigation of a Bill and report to the Assembly, no amendments to the Bill can be made at this stage. Amendments can, however, be made at 'Consideration Stage' and 'Further Consideration Stage'. Amendments may address human rights and equality concerns raised, for example, during the Committee stage. Amendments may also, however, themselves introduce further equality or human rights concerns. There appears, however, to be no specific legal obligation on a Minister or other sponsor of a Bill to give a view on compatibility other than on or before its introduction. Nor is there a specific legal obligation on the Speaker to make a statement on the legislative competence of a Bill before final stage, though he is required under Section 10 (2) of the NIA 1998 to consider certain issues related to reserved and excepted matters before final stage in deciding whether a Bill should be referred to the Secretary of State.

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<sup>28</sup> Committee on Procedures (2002), *Review of the Legislative Process in the Northern Ireland Assembly*, Paragraph 4.21: <http://archive.niassembly.gov.uk/procedures/reports/report1-01r.htm#5>.

## Pre-Enactment Review

When a Bill has been passed by the Assembly, the Attorney General for Northern Ireland or the Advocate General for Northern Ireland may within four weeks of its passing, as specified in Section 11 of the NIA 1998, refer the question of whether a provision of a Bill would be within the legislative competence of the Assembly to the Supreme Court for decision.

In April 2011, The Attorney General for Northern Ireland referred the Damages (Asbestos-related Conditions) Bill to the UK Supreme Court, asking it to decide whether two of the Bill's clauses were within the legislative competence of the Assembly. In May 2011, however, he withdrew this reference stating that:

I have always been of the view that if the Scottish litigation before the Supreme Court was able to provide a definitive answer to the retrospective provisions classifying Pleural Plaques as actionable damage then there was no need for separate Northern Ireland proceedings.

...As there is a considerable overlap between the issues in the Northern Ireland Reference and the Scottish Appeal, I have reflected on whether in the light of the early listing of the Scottish Appeal I ought to continue with the Reference. I have come to the conclusion that if I withdraw the Reference and intervene by way of written submissions in the Scottish Appeal, relevant matters for this jurisdiction can still be properly ventilated before the Supreme Court but with a very significant reduction in the associated costs for Northern Ireland.<sup>29</sup>

The Scottish litigation being referred to by the Attorney General in his statement was an appeal from AXA General Insurance Limited to the Supreme Court challenging the lawfulness of the Damages (Asbestos-related Conditions) (Scotland) Act 2009 on a number of bases. One of these was that the legislation was incompatible with Article 1 of Protocol 1 (which relates to peaceful enjoyment of possessions) of the ECHR and therefore outside the legislative competence of the Scottish Parliament under the Scotland Act 1998. On this issue, the Supreme Court held that the applicants were entitled to bring proceedings under the Convention, as the effect of the Damages (Asbestos-related Conditions) (Scotland) Act 2009 was that they would be victims for the purposes of article 34 and that the amount of money they would be required to pay should be considered a possession for the purposes of Article 1 of Protocol 1. The Court also held, however, that A1P1 was not violated, as there was a legitimate aim for the interference with property, and the interference was proportionate.<sup>30</sup>

<sup>29</sup> Attorney General for Northern Ireland (Press Release 27/5/2011)'Damages (Asbestos-Related Conditions) Bill Reference Withdrawn' [http://www.attorneygeneralni.gov.uk/index/latest-news/news-archive/news-archive-2011/pleural\\_plaques\\_2.htm](http://www.attorneygeneralni.gov.uk/index/latest-news/news-archive/news-archive-2011/pleural_plaques_2.htm) (accessed 5/2/2014)

<sup>30</sup> Supreme Court (12 October 2011 Press Summary) AXA General Insurance Limited and others (Appellants) v The Lord Advocate and others (Respondents) [2011] UKSC 46 On appeal from the Court of Session: [2011] CSIH 31 [http://supremecourt.uk/decided-cases/docs/UKSC\\_2011\\_0108\\_PressSummary.pdf](http://supremecourt.uk/decided-cases/docs/UKSC_2011_0108_PressSummary.pdf) (accessed 5/2/2014)

Under Section 14 of the NIA 1998, the Secretary of State is required, when certain circumstances obtain, to refrain from submitting a Bill for Royal Assent. These circumstances include when the Attorney General for Northern Ireland or the Advocate General for Northern Ireland are entitled to make a reference in relation to a provision of the Bill under Section 11 of the NIA 1998 or any such reference has been made but has not been decided or otherwise disposed of by the Supreme Court. In addition, where the Supreme Court has decided that a provision of a Bill would not be within the legislative competence of the Assembly, the Secretary of State may not submit the Bill for Royal Assent.

Under Section 14 (5) of the NIA 1998 the Secretary of State may decide not to submit a Bill for Royal Assent if he considers that it contains a provision which is incompatible with, amongst other things, international obligations. As has been noted earlier in this paper, these it might be argued include the UK's obligation in relation to compliance with a range of international human rights instruments.

The Assembly's procedures for Public Bills provide an opportunity to amend a Bill where the Supreme Court decides that a provision of the Bill is not within the legislative competence of the Assembly. At this 'Reconsideration Stage' Members consider only the amendments proposed to be made to the Bill and, if amendments are agreed to, a vote is taken on whether to approve the Bill as amended.

### 3. Post Enactment

Whilst the information above describes a complex system of human rights and equality proofing, it is also true that:

...structural checks are not absolute safeguards. Parliamentary scrutiny can fail. Statements by Ministers and Presiding Officers may be important practical safeguards to the work of the devolved Assemblies...but they do not guarantee *intra vires* legislation. And of course, not only can political moods change, but the questions which vex government lawyers during the legislative process, may differ from those which excite post-enactment litigation by individual litigants.<sup>31</sup>

Ultimately, if the safeguards on equality and human rights grounds fail, enacted legislation can be pursued through the courts and the Supreme Court has jurisdiction to hear and determine questions relating to the powers and functions of the Northern Ireland Executive and the Assembly.

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<sup>31</sup> Graham Gee (2005), 'Devolution and the Courts' in Robert Hazell and Richard Rawlings (eds.), *Devolution, Law Making and the Constitution*, Exeter: Imprint Academic, p.256.

## Appendix 1

## STAGES OF A BILL AT WHICH HUMAN RIGHTS STANDARDS ARE CONSIDERED

Stage	Action
1. Pre-legislative	<p>Sponsoring Department includes an Impact Statement on Human Rights and Equality in the Explanatory and Financial Memorandum to the Bill. Policy issues contained in the draft Bill are scrutinised by the relevant Assembly Committee during the pre-legislative consultation between Committee and Department.</p> <p>Minister in charge of a Bill must publish a written statement to the effect that in his/her view the Bill would be within the legislative competence of the Assembly <b>(Section 9 of the Northern Ireland Act 1998).</b></p>
2. Introduction and First Stage	<p><b>Standing Order 30 (1)</b> Copy of Bill received by Speaker prior to Introduction and scrutinised by Assembly Legal Office in respect of legislative competence including compatibility with, inter alia, Convention rights (required by <b>Section 6 of the Northern Ireland Act 1998</b>)</p> <p><b>Standing Order 30 (3)</b> No Bill may be introduced in the Assembly if the Speaker decides that any provision is not within the legislative competence of the Assembly <b>(Section 10 (1) of the Northern Ireland Act 1998).</b></p> <p>Speaker sends copy of every Bill to the Northern Ireland Human Rights Commission as soon as practicable after its introduction <b>(Section 13 (4) of the Northern Ireland Act 1998 and. Standing Order 30 (6))</b></p> <p><b>Standing Order 34 (2)</b> A Member, at any time after a Bill has been introduced (or in the case of a draft Bill or proposal for legislation, after Publication for Public consultation), may table a motion that the NIHRC be asked to advise whether the Bill is compatible with human rights</p> <p><b>Standing Order 35 (2)</b> A member of the Executive Committee or the Chairman of the relevant Statutory Committee (or member of that Committee acting on his behalf) may table a motion to refer a Bill, draft Bill or proposal for legislation to an Ad Hoc Committee on Conformity with Equality Requirements. This Committee will report on whether the Bill is in conformity with Equality requirements, including rights under the European Convention on Human Rights.</p>
3. Committee Stage	<p><b>Standing Order 33</b> Detailed clause-by-clause examination of the Bill. Concerns expressed by Members at Second Stage are addressed. Human Rights Commission may be asked to give a written submission for comment on the Bill's provisions, or be called to give oral evidence.</p> <p><b>Standing Order 35 (2)</b> The Chairperson of the appropriate Statutory Committee (or another</p>

	<p>Committee member acting on his behalf) may propose that the Bill be transferred to an Ad Hoc Committee on Conformity with Equality Requirements.</p> <p>The Ad Hoc Committee reports within 30 days of the referral, or at a time agreed by the Assembly (<b>Standing Order 35 (5)</b>) and has the power to call for people and papers to assist in its consideration (<b>Standing Order 60 (2)</b>).</p>
<b>4. Consideration/Further Consideration Stages</b>	<p><b>Standing Orders 36 (4) and 37 (5)</b></p> <p>At the end of both the Consideration Stage and the Further Consideration Stage, a Bill stands referred to the Speaker.</p>
<b>5. Final Stage</b>	<p><b>Standing Order 39 (2)</b></p> <p>Prior to Final Stage each Bill is considered by the Speaker in accordance with <b>Section 10 of the Northern Ireland Act 1998</b></p>
	<p><i>When a Bill has been passed by the Assembly, the Attorney General for Northern Ireland or the Advocate General for Northern Ireland may within four weeks of its passing, as specified in Section 11 of the NIA 1998, refer the question of whether a provision of a Bill would be within the legislative competence of the Assembly to the Supreme Court for decision.</i></p>
<b>6. Reconsideration</b>	<p><b>Standing Order 40 (1)</b></p> <p>A Bill will be set down for reconsideration if Supreme Court decides that any provision of the Bill is not within the legislative competence of the Assembly.</p>
<b>7. Royal Assent</b>	<p><b>Under Section 14 (5) of the Northern Ireland Act 1998</b> the Secretary of State may decide not to submit a Bill for Royal Assent if he considers that it contains a provision which is incompatible with international obligations.</p>

Table adapted from table contained in: SESSION 2001/2002 FIRST REPORT - Review of the Legislative Process in the Northern Ireland Assembly Ordered by The Committee on Procedures *to be printed 16 January 2002 Report 01/01R (to the Northern Ireland Assembly from The Committee on Procedures)*  
<http://archive.niassembly.gov.uk/procedures/reports/report1-01r.htm#5>