Twitter Thread by Adam Wagner



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Here is the terms of reference and panel for the "Independent Review of the Human Rights Act"

Some initial thoughts

Terms of reference:

- Entirely expected that the "take into account" duty, which has been interpreted by the UK courts as a duty to follow the European Court of Human Rights where it has clearly and constantly taken a particular line, is under review...

"The impact of the HRA on the relationship between the judiciary, executive and Parliament, and whether domestic courts are being unduly drawn into areas of policy"

This is such a diffuse and difficult question to answer and ultimately depends on your definition of "policy"...

The framing of the question gives lie to this being a neutral 20-year "review". It's not, because the government plainly wants the outcome to be a finding that the HRA has led to courts "unduly" being drawn into areas of "policy"

There will be certain members of the panel, e.g. Sir Stephen Laws of the Judicial Power Project, who will argue strongly that the HRA has led to courts being "unduly" drawn into areas of policy.

"The implications of the way in which the Human Rights Act applies outside the territory of the UK and whether there is a case for change."

Again, expected, this is really about a hobby horse of certain members of the government re the HRA applying to theatres of war abroad.

This statement from the Lord Chancellor is disingenuous. If this really was a review of whether HRA was "working effectively", terms of reference would include analysing whether HRA is working effectively, i.e. has it been an effective means of protecting people's human rights.

It is actually somewhat mad that terms of reference do not include reviewing effectiveness of the Human Rights Act, in its 20 years of operation, in protecting rights of individuals. That's the whole point. Any concerns should be weighed against a careful review of its success.

The panel - it's not terrible, a number of independent thinkers on there who will be concerned to do a rigorous job and won't want their reputations traduced by being seen as government patsies.

I don't know everyone on it but would suggest on average panel 'leans in' to govt view of the HRA being constitutionally tricky and potentially needing reigning in - Stephen Laws will be a strong voice for that - but I don't think a foregone conclusion and not a kangaroo court..

... But, having said that, there are no obvious Human Rights Act supporters on panel - others may correct me, I don't know all the names well.

This is not an attempt to create a balanced panel - more, I suggest, a credible panel of experts who govt hope will do what it wants