

# NORTHERN IRELAND TROUBLES (LEGACY AND RECONCILIATION) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Northern Ireland Troubles (Legacy and Reconciliation) Bill as introduced in the House of Commons on 17<sup>th</sup> May 2022 (Bill 10).

- These Explanatory Notes have been prepared by the Northern Ireland Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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# Overview of the Bill

1 The Bill will address the legacy of the Troubles. It will:

- Establish a new independent body, the Independent Commission for Reconciliation and Information Recovery (ICRIR). When requested to do so, this body will conduct investigations into deaths and very serious injuries which resulted from conduct forming part of the Troubles. In each case, the body will compile and publish a report of its findings. The ICRIR may also open an investigation into a death or very serious injury if an individual comes forward seeking immunity (see below) in relation to that specific death or injury, if it does not already have a live investigation ongoing. State bodies and agencies will be under a duty to give the ICRIR full disclosure of all relevant material that is reasonably required for it to fulfil its functions. The ICRIR will also produce a historical record of all remaining deaths (those in relation to which a request is not made) that occurred during the Troubles.
- Require designated persons to carry out a programme of memorialisation work, including an oral history initiative. The aim is to provide a central place for people of all backgrounds to share their experiences and perspectives relating to the Troubles. The designated persons will also produce an evidence-based report within one year which will make a set of concrete recommendations for structures and initiatives to memorialise the Troubles.
- Introduce a conditional immunity scheme, allowing those who cooperate with the ICRIR to receive immunity from prosecution for offences resulting in or connected with Troubles-related deaths and serious injuries. The ICRIR will be under a duty to grant immunity where certain conditions are met. In the event immunity is not granted to an individual, the ICRIR can continue its investigation and if the evidence permits, produce a file for prosecution which will be submitted to the relevant prosecutor. Individuals will be able to apply for immunity for conduct related to any relevant case where a decision to prosecute is yet to be made by prosecutors. Any cases where a decision to prosecute has been made will continue and it will not be possible for individuals to seek immunity.
- Bar investigations into Troubles related incidents by any organisation other than the ICRIR, and bar prosecutions for Troubles-related offences not involving death or serious injury, or which are not connected to offences involving death or serious injury.
- Bar civil claims arising from conduct forming part of the Troubles and events between 1 January 1966 and 10 April 1998, where a claim has yet to be filed by the date of the Bill's introduction. Those before the Bill's introduction will continue.
- Inquests which have not yet reached the stage of a substantive hearing by the 1 May 2023 or the date on which the ICRIR becomes operational (whichever comes first) will be stopped, but can be referred by families or coroners to the ICRIR for investigation.

## Policy background

2 More than 3,500 people were killed during the Troubles, including over 1000 members of the security forces. Of those killed, it is estimated that 58% were the responsibility of republican paramilitaries, 30% of loyalist paramilitaries, and 10% of the security forces.<sup>1</sup> Many of these cases remain unsolved - as of May 2022, the Police Service of Northern Ireland currently has a caseload of over 900 cases involving nearly 1,200 deaths. During a Northern Ireland Affairs Committee evidence session in September 2020, the Chief Constable of the Police Service of Northern Ireland said that to go through the current Legacy Investigation Branch caseload, “which is not all the 3,500 deaths, would take over 20 years from a standing start now on the current resource base.”<sup>2</sup>

### *Previous attempts to address the Past in Northern Ireland*

3 In 2009, The Consultative Group on the Past chaired by Lord Eames and Denis Bradley made [31 proposals](#). The proposals included: an Independent Legacy Commission to tackle securing reconciliation, justice and information; a new Review and Investigation Unit to deal with historical cases; no new public inquiries; a reconciliation forum; an annual day of reflection; and funding to tackle sectarianism. A £12,000 payment to be made to the relatives of the people killed during the Troubles was also proposed. This elicited strong reactions from political parties and wider civil society, and the report was not taken forward.

4 In 2014, the [Stormont House Agreement](#) on legacy reform was negotiated by the UK and Irish Governments and the Northern Ireland parties. The Stormont House Agreement was, with the exception of the Ulster Unionist Party, supported by all of the major Northern Ireland parties and the Irish Government. It agreed on a number of basic principles including reconciliation, rule of law and a victims’ centred approach and proposed the establishment of several bodies to take this forward.

5 Between May 2018 and October 2018, the Government invited extensive stakeholder feedback on [a draft bill](#) giving effect to the Stormont House Agreement, as part of a public consultation entitled ‘Addressing the legacy of the past - moving Northern Ireland forward.’ The consultation attracted over 17,000 responses and [a summary of the responses](#) was published in July 2019.

6 The Northern Ireland Troubles (Legacy and Reconciliation ) Bill builds on the principles and other aspects of the Stormont House Agreement principles, such as a focus on information recovery and memorialising the Troubles. In doing so, it seeks to address practical implementation issues with the Stormont House Agreement which have been

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<sup>1</sup>[CAIN Web Service](#) summarising: An Index of Deaths from the Conflict in Ireland 1969-1993, Malcolm Sutton

<sup>2</sup> Oral evidence: Addressing the Legacy of Northern Ireland's Past: The UK Government's New Proposals, HC 329, 2 September 2020  
<https://committees.parliament.uk/oralevidence/800/html/>

identified since the consultation, including managing the operational difficulties of investigating such a high number of complex, historical cases.

## Legal background

7 The Bill amends or repeals the following legislation:

- Section 3 of the Prosecution of Offences Act 1985
- Sections 75(3)(b) and 76(7)(c) of the Northern Ireland Act 1998
- Schedule 1 Part 6 of the Freedom of Information Act 2000
- Section 65(6)(cb) of the Regulation of Investigatory Powers Act 2000
- Section 31 of the Justice (Northern Ireland) Act 2002
- Section 58 of the Investigatory Powers Act 2016
- Schedule 4, Part 1 of the Investigatory Powers Act 2016
- Schedule 18 paragraph 3 of the Data Protection Act 2018
- Section 23 of the Prescription and Limitation (Scotland) Act 1973
- Section 27 of the Limitation Act 1980
- Section 4 of the Foreign Limitation Periods Act 1984
- Part 5 of the Foreign Limitations (Northern Ireland) Order 1985
- Part 73 of the Limitation (Northern Ireland) Order 1989
- Part 190 of the Merchant Shipping Act 1995
- Part 50 of the Police (Northern Ireland) Act 1998
- Parts 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, 16 and Schedule 3 of the Northern Ireland (Sentences) Act 1998
- Section 11 and Schedule 1 of the Coroners and Justice Act 2009
- Section 13 of the Coroners Act 1998
- Section 7 and Schedule 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.



## Territorial extent and application

- 8 Clause 55 sets out the territorial extent of the Bill, or the jurisdictions where the Bill will form part of the law. The extent of a Bill can be different from its application. Application indicates where a Bill produces a practical effect. The Bill extends to the whole of the United Kingdom, subject to clause 55(2)-(4).
- 9 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned.
- 10 In respect of Northern Ireland, the Legislative Consent Motion process will be engaged by provisions relating to: the limitations of civil proceedings, criminal proceedings and inquests; the release of prisoners; the establishment of the ICRIR; the reviewing and reporting functions of the ICRIR; and the provisions regarding memorialising the Troubles.
- 11 In respect of Scotland, the Legislative Consent Motion process will be engaged by provisions relating to: the limitations of civil proceedings, criminal proceedings and inquiries; the release of prisoners; the establishment of the ICRIR; and the reviewing and reporting functions of the ICRIR.
- 12 The provisions which apply to Wales relate to reserved matters and therefore do not engage the LCM process.
- 13 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

# Commentary on provisions of Bill

## Part 1: The Troubles

### Clause 1: Meaning of “the Troubles” and other key expressions

- 14 This clause provides definitions and explanations as to what is meant by “the Troubles” and other key expressions for the purposes of the Bill.
- 15 Subsections (1) to (6) provide that the Bill is applicable to conduct and events taking place within the defined specific and limited time period of the Troubles. Subsection (7) provides that the Bill is applicable to such conduct taking place anywhere in the world.

## Part 2: The Independent Commission for Reconciliation and Information Recovery (ICRIR)

### The ICRIR, the Commissioners and ICRIR officers

### Clause 2: The Independent Commission for Reconciliation and Information Recovery

- 16 This clause provides for the formation of the Independent Commission for Reconciliation and Information Recovery (ICRIR) (subsection (1)) as a body corporate (subsection (2)), consisting of a Chief Commissioner, a Commissioner for Investigations and up to three additional Commissioners (subsection (3)).
- 17 Subsection (4) lists the functions of the ICRIR. These are to:
  - A. Carry out reviews into any deaths that resulted from conduct forming part of the Troubles;
  - B. Carry out reviews of other harmful conduct forming part of the Troubles (defined in clause 1);
  - C. Produce reports on the findings of each of these reviews;
  - D. Determine whether to grant immunity from prosecution for serious or connected Troubles-related offences;
  - E. Refer deaths that were caused by conduct forming part of the Troubles, and other harmful conduct forming part of the Troubles, to prosecutors;
  - F. Produce a historical record of deaths that resulted from conduct forming part of the Troubles.
- 18 Subsection (5) requires the ICRIR to publish an annual report on prescribed matters such as finance and administration, and any other matters the ICRIR consider appropriate. Subsection (6) requires the Commission to provide a copy to the Secretary of State.

- 19 Subsection (7) grants the Secretary of State the ability to provide funding or other resources to the ICRIR so that it may carry out its work.
- 20 Subsection (8) introduces Schedule 1 of the Bill, which contains further detail about the ICRIR, its Commissioners and its officers.

### Clause 3: ICRIR officers

- 21 This clause provides that people may be employed or seconded to serve as ICRIR officers as defined in subsection (4).
- 22 Subsection (3) provides that in employment or seconding people the ICRIR must, as far as it is practicable, ensure that ICRIR officers collectively hold relevant experience of conducting criminal investigations either in Northern Ireland or elsewhere.
- 23 Subsection (4) states that, for the purpose of this Bill, an ICRIR officer means the Commissioner for Investigations and officers appointed or seconded under this clause.

### Clause 4: Actions of the ICRIR: safeguards

- 24 This clause provides that the ICRIR must not do anything which would prejudice or risk the national security of the United Kingdom; actual or prospective criminal proceedings; or the life or safety of any person.
- 25 Subsection (3) indicates that further detail on how clause 4(1) applies in relation to disclosures of information can be found in clauses 25(2) to 25(9) of this Bill.

### Clause 5: Full disclosure to the ICRIR

- 26 This clause provides that relevant authorities must provide information required by the ICRIR, and may provide additional information, in connection with the ICRIR's review or immunity function. "Relevant authority" is defined in clause 51 of the Bill.
- 27 Subsection (1) provides that relevant authorities are required to make available any information, documents, or other material when reasonably required by the ICRIR, and subsection (2) provides that they may provide any additional information which the relevant authorities consider may be needed by the ICRIR in connection with its reviews or immunity function.
- 28 Subsections (3) and (4) provide that the relevant authority and the Commissioner for Investigations are to agree the manner in which information is made available, but that the Commissioner for Investigations may specify the way in which information is to be made available.
- 29 Subsection (5) provides that agreements under subsection (3), and requirements under subsection (4), may include giving the actual information, making a copy of it, or providing access to the information. Subsection (6) provides that requirements under subsection (4) must be consistent with regulations made by the Secretary of State under clause 29 of the Bill about the holding and handling of information.

- 30 Subsection (7) provides that the Commissioner for Investigations may require the assistance of the Chief Constable of the Police Service Northern Ireland or the Police Ombudsman for Northern Ireland with regards to the effective use of information made available by either person under this clause.
- 31 Subsection (8) provides that when making such information available, the relevant authority is exempt from any potential breach of confidence or any other restriction on the disclosure of information.
- 32 Subsection (9) offers a clarification that a “copy” could include a photograph or similar representation.

## Clause 6: Operational powers of ICRIR officers

- 33 This clause sets out the operational powers of ICRIR officers. Clause 3 subsection (4) of this Bill defines an ICRIR officer as being the Commissioner for Investigations as well as persons appointed or seconded as a result of clause 3.
- 34 Subsection (1) provides the Commissioner for Investigations with the same powers and privileges of a constable. These powers and privileges are a combination of the powers and privileges available at common law and statute, which includes the Police and Criminal Evidence Act 1984 in England and Wales, and the Police and Criminal Evidence (Northern Ireland) Order 1989 in Northern Ireland. In Scotland these powers and privileges are derived from a mixture of common law and statute including the Criminal Procedure (Scotland) Act 1995.
- 35 Subsection (2) provides that the Commissioner for Investigations may designate the powers and privileges of a constable to any other ICRIR officer, if the Commissioner for Investigations is satisfied that the officer in question is: capable of effectively exercising those powers and privileges; has received adequate training in respect of the exercise of those powers and privileges; and is otherwise a suitable person to exercise those powers and privileges.
- 36 Subsection (3) provides that the powers and privileges of a constable are only exercisable by the Commissioner for Investigations and any other designated ICRIR officer for the purposes of any function other than the historical record.
- 37 Subsection (4) gives effect to Schedule 2 of this Bill, which provides further provision about the operational powers of ICRIR officers.

## Admissibility of information provided to the ICRIR

### Clause 7: Admissibility of material in criminal proceedings

- 38 This clause creates restrictions on the use of material against a person in criminal proceedings, where that material was obtained by or provided to the ICRIR by that person. It does not affect the use of material in proceedings brought against any other person.

- 39 Subsection (2) relates to “compelled material”, which is defined in subsection (10) as anything that has been obtained by the ICRIR through the exercise of the ICRIR’s powers under section 14 (power to issue a notice requiring the provision of information etc.). By virtue of this subsection, compelled material cannot be used in evidence in criminal proceedings against the person who was compelled to provide it.
- 40 Subsections (3) relates to material provided to the ICRIR by an applicant for immunity from prosecution in connection with that application. Neither this material, nor anything else obtained directly or indirectly as a result of material provided, may be used in evidence in criminal proceedings against the applicant.
- 41 Subsection (4) relates to material not covered by subsections (2) and (3). It provides that material obtained from, or provided by, a person for the purposes of, or in connection with, any of the ICRIR’s functions may not be used in evidence against that person unless one of the two exceptions created by subsections (5) or (6) apply.
- 42 Subsection (5) creates an exception from the restriction created by subsection (4), in cases where the material was provided to, or obtained by, an ICRIR officer designated under clause 6(1) or (2) (the Commissioner for Investigations and any other ICRIR officer designated as having the powers and privileges of a constable). An example would include information provided by a suspect in response to questions put as part of a formal interview under caution.
- 43 Subsection (6) creates a further exception from the restriction created by subsection (4), which applies in cases where the criminal proceedings relate to the ICRIR’s exercise of its functions, any other conduct by the ICRIR, or the conduct of current and former ICRIR staff and others in a similar position. This exception would, for example, ensure that subsection (4) did not inhibit the prosecution of a person who was found to have deliberately made false statements on an application form in order to secure employment with the ICRIR.
- 44 Subsection (7) clarifies that the exceptions created by subsections (5) and (6), where they apply, do not affect the application of any other legislation or rule of law relating to their admissibility in criminal proceedings.

## Clause 8: Admissibility of material in civil proceedings

- 45 This clause provides for the inadmissibility in certain proceedings of “protected material”, defined for the purposes of this Bill in subsection (6) as material obtained or produced by the ICRIR in the exercise of its functions.
- 46 Subsection (1) provides that compelled protected material is inadmissible in civil or coronial proceedings, and certain inquiries.
- 47 Subsections (2) provides that these restrictions on admissibility and use of evidence do not apply to proceedings related to the operation of the ICRIR and its officers, or to judicial

review proceedings or equivalent in Scotland relating to the exercise of functions or the conduct of a person other than the ICRIR.

## Reviews of deaths and other harmful conduct

### Clause 9: Requests for reviews of deaths

- 48 This clause specifies who may make a request of the ICRIR to take forward a review into a death resulting from the Troubles.
- 49 Subsection (1) provides that a close family member of the deceased can make a request for a review. Subsection (2) provides that if the deceased has no close family members, any family member can make a request if it is appropriate for them to do so. Subsection (7) provides that it is for the Commissioner for Investigations to decide whether such a request is appropriate.
- 50 Subsections (3) and (4) provide that the Secretary of State for Northern Ireland and the Attorney General for Northern Ireland may request a review of any death that resulted directly from the Troubles. Subsection (5) states that the Advocate General for Northern Ireland may make such requests if certain national security interests apply.
- 51 Subsection (6) lists additional officials who may request a review of a death that resulted directly from the Troubles:
- a. a coroner in Northern Ireland who is responsible for an inquest into that death or was responsible for an inquest into that death which has been closed;
  - b. a senior coroner in England and Wales who is responsible for conducting an investigation into that death or who was responsible for conducting an investigation into that death which has been discontinued;
  - c. the Chief Coroner of England and Wales, if the Chief Coroner is prohibited by paragraph 3(4) of Schedule 1A to the Coroners and Justice Act 2009 from directing a senior coroner to conduct an investigation into the death;
  - d. a sheriff in Scotland who is responsible for conducting an inquiry into that death or was responsible for conducting an inquiry into that death which has been discontinued;
  - e. the procurator fiscal in Scotland who is responsible for conducting an investigation into that death, or was responsible for conducting an investigation into that death which has been discontinued;
  - f. the Lord Advocate, if the Lord Advocate is prohibited by paragraph 3(a) of Schedule A1 to the Inquiries into Fatal Accidents and Sudden Deaths etc. Act 2016 from exercising functions so as to cause an inquiry to be held into the death.
- 52 Subsection (8) provides that requests must be made within the first five years of the ICRIR becoming operational.

53 Subsection (9) defines a death caused directly by conduct forming part of the Troubles as one wholly caused by physical injuries or physical illness, or both, that resulted directly from an act of violence or force, which was conduct forming part of the Troubles.

54 Subsection (10) provides explanation and definition of key terms used in this clause.

#### Clause 10: Requests for reviews of other harmful conduct forming part of the Troubles

55 This clause provides for requests for reviews into relevant Troubles-related circumstances.

56 Subsection (1) provides that a person who suffered serious physical or mental harm from other harmful conduct forming part of the Troubles may request the ICRIR to take forward a review into that conduct.

57 Subsection (2) provides that the Secretary of State may request a review of other harmful conduct forming part of the Troubles regardless of whether it caused serious physical or mental harm to any person.

58 Subsection (3) provides that requests must be made within the first five years of the ICRIR becoming operational.

#### Clause 11: Requests for reviews: general provision

59 This clause makes further provision about requests for reviews.

60 Subsection (1) provides that the person making a request may include particular questions about the events to which the review will relate.

61 Subsection (2) provides that the Commissioner for Investigations is to decide how requests are to be made and in what circumstances requests may be amended or withdrawn. Subsections (3) and (4) provide that the Commissioner for Investigations is to decide how requests related to matters which are subject to an ongoing review are to be dealt with, including deciding whether such requests are valid, or in cases where a review has already been initiated deciding whether the requestor should be treated as having joined the original request.

62 Subsection (6) provides that when a review has been carried out, the Commissioner for Investigations will determine how to deal with subsequent requests ensuring, under subsection (7), that the ICRIR takes into account the initial review and does not duplicate any aspect of it, other than if the ICRIR considers that necessary. Under subsection (8) the Commissioner for Investigations will have the authority to reject requests.

#### Clause 12: Reviews in connection with requests for immunity from prosecution

63 This Clause provides that the ICRIR may carry out a review of a death or other harmful conduct forming part of the Troubles, if a person requests immunity from prosecution from the ICRIR for a Troubles-related offence arising from a death, other harmful conduct, or any other conduct which formed a part of the same event.

### Clause 13: Conduct of reviews

- 64 This clause provides that the Commissioner for Investigations is responsible for how reviews are carried out. Subsection (5) provides that, when deciding what steps are necessary in carrying out the review, the Commissioner must take into account previous investigations into a particular death or relevant Troubles-related circumstance avoiding any unnecessary duplication.
- 65 Subsection (6) provides that in carrying out reviews the ICRIR must, where relevant, take into account (a) any questions included in the request for the review; (b) whether a final report can be produced; (c) whether there has been a request to grant immunity from prosecution; and (d) whether information from the review is likely to be provided to a prosecutor.
- 66 Subsection (7)(a) provides that a review is not to be carried out when the Commissioner for Investigations decides it is not appropriate for that individual to make the request (under clause 8(2)), and subsection (7)(b) provides a review will not be carried out when the Commissioner for Investigations has rejected the request under clauses 11(3), 5(a) or 8.
- 67 Subsection (8) defines an offence as being connected with a death or other harmful conduct, in particular, if the offence formed part of the same event as that death or other harmful conduct. Under this subsection, “relevant conduct by P” means conduct by P forming part of the Troubles that is relevant to P’s request for immunity from prosecution.

### Clause 14: Supply of information

- 68 This clause gives the Commissioner for Investigations powers to require persons by notice to provide information and other material in connection with the ICRIR’s review function.
- 69 Subsection (2) provides that the Commissioner for Investigations may, by notice, require a person to attend at a time and place stated in the notice, in order to provide information, documents or any other thing in the person’s custody or under the person’s control. Something being “under a person’s control” is defined in subsection (8).
- 70 Subsection (3) provides that the Commissioner for Investigations may, by notice, require a person to provide information, documents or any other thing in the person’s custody or under the person’s control within a reasonable time period.
- 71 Subsections (4) and (5) provide that the notice must explain the potential consequences of not complying and how the person can make a claim that they are unable to comply with the notice. Any such claim is to be determined by the Commissioner for Investigations, who may revoke or vary the notice on the grounds that the person is unable to comply or that circumstances mean that it would be unreasonable to require them to comply.
- 72 Subsection (6) provides that when deciding to revoke or vary a notice on the basis that it is unreasonable to require a person to comply with the notice, the Commissioner for Investigations must consider the public interest in the information in question being obtained and its likely importance.



- 73 Subsection (7) provides that a relevant authority may claim (a) that a particular person complying with a notice served under this section would prejudice, or risk prejudicing the national security of the United Kingdom, or would risk putting the life or safety of any person at risk; and (b) that this would not be the case if an alternative person nominated by that relevant authority complied with that notice instead. In such circumstances, it is for the Commissioner for Investigations to decide whether to vary the notice so as to require the alternative person to comply with it, or to otherwise revoke the notice or leave it unchanged.
- 74 Subsection (9) gives effect to Schedule 3 which makes provision about enforcement of notices under this clause.

### Clause 15: Production of reports on the findings of reviews

- 75 This clause applies where a review has been carried out by the ICRIIR and sets out conditions for the production of reports on the findings of the review.
- 76 Subsection (1) sets out that this section applies where (a) a review of a death that was caused by conduct forming part of the Troubles, or (b) a review of other harmful conduct forming part of the Troubles, has been carried out.
- 77 Under subsection (2), the Chief Commissioner must produce a final report on the findings of the review in accordance with this section.
- 78 Subsection (3) states that where the review of a death or other harmful conduct (requested under clause 9 or 10) has been carried out, before producing a final report the Chief Commissioner must:
- A. give a draft to the person who requested the review; and
  - B. allow that person to make representations during the applicable response period.
- 79 Subsection (4) states that where the review of a death (requested under section 9 or following a decision made by the ICRIIR under clause 12(2)) has been carried out, before producing a final report the Chief Commissioner must:
- A. give a draft of the report to any relevant family members of the person to whose death the review relates; any relevant family members of any other persons killed in the relevant event; any person who suffered serious physical or mental harm in the relevant event or, where such a person has subsequently died, any relevant family members of the person; and
  - B. allow those persons to make representations about the report during the applicable response period.
- 80 Subsection (5) provides that where the review of other harm conduct (requested under clause 10 or following a decision made by the ICRIIR under clause 12(3)) has been carried out, before producing a final report the Chief Commissioner must:

- A. give a draft of the report to any relevant family member of any persons killed in the relevant event; and any person who suffered serious physical or mental harm in the relevant event or, where such a person has subsequently died, any relevant family members of the person
  - B. allow those persons to make representations about the report during the applicable response period.
- 81 In the case of any review, where the report is proposed to include material criticising an individual, subsection (6) sets out the Chief Commissioner must before producing a report:
- A. give a draft of the report to the individual; and
  - B. allow them to make representations in the applicable response period.
- 82 Subsection (7) provides that the Chief Commissioner must not produce the final report until after any applicable response period has ended or all of the applicable response periods have ended where two or more individuals have been given draft reports under subsections (3) - (5) and those periods end on different days.
- 83 Subsection (8) provides that the Chief Commissioner may exclude material included in the draft of the report from the final report if they consider it would not be in the public interest for that material to appear in the final report.
- 84 Subsection (9) provides that the Chief Commissioner must consider representations made under subsections (3) to (5) when deciding whether to exclude any material under subsection (8).
- 85 Subsections (10) and (11) provide that the Chief Commissioner does not have to provide a person originally given a draft of the final report under subsections (3) to (6) with any revised draft, nor provide the same draft when a draft is provided to multiple persons.
- 86 Subsection (12) defines the terms “applicable response period”, “relevant family member”, “material criticising an individual” and “relevant event”.

### Clause 16: Issuing and publication of reports

- 87 This clause makes provision for when the Chief Commissioner produces a final report on the findings of a review in accordance with clause 15.
- 88 Subsection (2)(a) states that the Chief Commissioner must, where the review was carried out in response to a request, give the final version of the report to the person who requested the review and subsection (2)(b) provides that the Chief Commissioner must publish the report.
- 89 Subsection (3) provides that if the review was carried out following a decision by the ICRIR under section (12), the Chief Commissioner may publish the final report.

- 90 Subsection (4) provides that the ICRR must, when deciding whether to publish the final report on the finding of a review, taking into account the views of: a) any relevant member of the family of any person killed in the relevant event; and (b) any person who suffered harm in the relevant event; or where such a person has subsequently died, members of the person's family.
- 91 Under subsection (5), the ICRR must take such steps as it considers reasonable to identify and obtain the views of persons referred to in subsection (4)(a) and (b).
- 92 Subsection (6) provides that it is for the Chief Commissioner to decide the manner in which the report or any statement is to be published.
- 93 Under subsection (7), the Chief Commissioner may give the person designated under Part 4 summaries of the final report, these do not need to be published.
- 94 Subsection (8) defines "relevant event" and "relevant family member".

### Clause 17: Reports: general provision

- 95 This clause sets out general provisions in relation to reports. Subsection (1) requires the Chief Commissioner to produce and issue a report under clauses 15 and 16 as soon as is practicable after the review has been carried out.
- 96 Subsection (2) provides that subsection (1) does not apply to the publication under clause 16(2)(b) or (3) of the final report of the findings of a review of death or other harmful conduct forming part of the troubles, if the Commissioner for Investigations refers any of the conduct of individuals in the final report to a prosecutor under clause 22(1).
- 97 In such a case, subsection (3) provides, that a final report is not published unless and until (a) the prosecutor has made a decision not to proceed with prosecution for any relevant offence, or (b) where a decision has been made to prosecute, the public prosecutions or prosecutions are no longer continuing.
- 98 Subsection (4) provides that clauses 15, 16 and this section do not require the Chief Commissioner to (a) give a copy of a draft of the report, or a final report, to any person, or (b) to publish a final report, unless the Chief Commissioner can do so in accordance with clauses 4(1) and 25(2).
- 99 Subsection (5) points to paragraph 8 of Schedule 5 which makes provision about (a) other material that must be included in the report, and, (b) circumstances in which a new report must be produced.
- 100 Subsection (6) applies concepts defined in clause 19(8)(f) and (g) for the purpose of this clause.
- 101 Subsection (7) defines terminology of this section

## Immunity from prosecution

### Clause 18: Immunity from prosecution

102 This clause sets out the conditions which need to be met for the ICRIR to grant immunity from prosecution. Subsection (1) imposes a duty on the ICRIR to grant immunity from prosecution in a case where each of conditions A to C are met.

103 Subsections (2), (3) and (5) establishes conditions A to C respectively:

- A. The person has requested immunity from prosecution.
- B. The immunity requests panel (see clause 21) is satisfied that the person has provided an account which is true to the best of their knowledge and belief and which describes conduct by that person which forms part of the Troubles.
- C. The panel is satisfied that the person's conduct, as described by them in their account, would tend to expose that person to a criminal investigation for involvement in, or prosecution for, one or more serious or connected Troubles-related offences. (For the purposes of determining whether this condition is met, subsection (6) requires the panel to disregard the effect of the restrictions on criminal investigations and prosecutions created elsewhere in the Bill in relation to such offences).

104 Subsection (4) sets out that the person applying for immunity may refer to information which has previously been given, if the panel is satisfied that the information is true to the best of the person's knowledge and belief.

105 Subsections (7) to (12) require the immunity requests panel to decide how to formulate the grant of immunity. Under subsection (7) the panel has three options, but whichever it chooses the grant of immunity must be broad enough in scope to cover all the serious or connected Troubles-related offences which the panel considers the person's conduct, as described in their account, would tend to expose that person to investigation/and or prosecution for (so called "possible offences"). An award of general immunity - defined in subsections (9) and (10) - is likely to be appropriate in most cases, but the panel has the flexibility to grant specific immunity - defined in subsection (8) in instances where - for example - an individual may have had a lesser role in a death or serious injury, or where the factual position is straightforward.

106 Subsection (13) sets out that the ICRIR must in writing notify the individual of the outcome of their application for immunity, and must, where the duty to grant immunity applies because each of the conditions A to C are satisfied, grant immunity in accordance with subsections (7) and (12). Subsection (10) establishes that immunity cannot be revoked.

### Clause 19: Requests for immunity: procedural matters

107 This clause sets out the procedural aspects for granting immunity, and circumstances in which a request for immunity is not valid.

- 108 Subsections (1) provides that a request for immunity would not be valid when a public prosecution of the applicant for conduct relating to the request is already underway or the applicant has a conviction for a relevant Troubles-related offence. Subsection (2) provides that a request is not valid when a request for immunity has been made after the fifth year since the ICRIR became operational (there is an exception where there is an ongoing review relating to the same subject matter). Subsection (5) provides that a request for immunity would not be valid if it is not made in accordance with applicable procedure (whether in rules made by the Secretary of State or determined by the Chief Commissioner). Subsection (6) sets out that it is for the Chief Commissioner to decide whether a request for immunity is valid.
- 109 Subsection (3) gives the Secretary of State the power to make rules on the procedures for making and dealing with requests for immunity. Subsection (4) provides that it is for the Chief Commissioner to determine the procedures for making and dealing with requests for immunity, subject to any rules made under subsection (3).
- 110 Subsection (7) gives the procedure for making rules under subsection (3).
- 111 Subsection (8) defines terminology used in this clause.

#### Clause 20: Determining a request for immunity

- 112 This clause applies where the immunity requests panel is required to determine an application for immunity from prosecution for a Troubles-related offence. Subsections (2) and (3) require the panel, when forming a view on the truth of the applicant's account, to take into account previous information given by the individual, and any other relevant information the ICRIR has received.
- 113 Subsection (4) clarifies that the immunity requests panel are not obliged to seek information from any person other than applicant when forming a view on the truth of the applicant's account (though they may do so). Subsection (5) clarifies that the immunity requests panel is not prevented from forming a view on the truth of the applicant's account in cases where the ICRIR has not decided to carry out a review under clause 12 in response to the applicant.
- 114 Subsection (6) states that in determining whether to grant immunity the panel must take account of any guidance given by the Secretary of State on when conditions B and C in clause 18 are deemed to be met. Subsection (7) gives the Secretary of State the power to issue such guidance and sets out a non-exhaustive list of the issues relating to conditions B and C that such guidance might address. Subsection (8) requires the panel to have regard to any guidance given by the Secretary of State as to how the grant of immunity should be formulated in accordance with subsections (7) to (12) of clause 18.

#### Clause 21: The immunity requests panel

- 115 Subsections (1) and (2) of this clause set out the composition of the immunity request panel, to be chaired by the Chief Commissioner and two ICRIR officers.

116 Under subsection (3), the Chief Commissioner has the power to (a) remove an ICRIR panel member, and (b) nominate another temporary member.

117 Under subsection (4), only ICRIR officers with appropriate legal qualifications and experience may be appointed to the panel (The Chief Commissioner will themselves be a current or former holder of high judicial office under Schedule 1). Subsection (5) requires that, when employing or seconding individuals to serve as ICRIR officers, they employ or second at least two individuals who have the required legal experience in accordance with subsection (4).

## Information for prosecutors

### Clause 22: Information for prosecutors

118 This clause gives the Commissioner for Investigations a power to refer a case to prosecutors and governs how that discretion should be exercised. Under subsection (2), the Commissioner for Investigations may, following a review, refer relevant conduct to a prosecutor if the Commissioner considers that there is evidence that it constitutes an offence by an individual known to them.

119 Subsection (3) requires that when referring a case to a prosecutor, the Commissioner for Investigations must notify the prosecutor of the suspected offence/s; must provide all information the Commissioner deems appropriate and if requested to do so by the prosecutor supply further information and material to the prosecutor.

## The historical record of deaths

### Clause 23: Production of the historical record

120 This clause sets out how the ICRIR must produce a record of deaths that resulted from conduct forming part of the Troubles as required by clause 2(4)(f).

121 Subsection (1) states that this must be a single report giving an account of the circumstances of all relevant deaths, defined in subsection (8) as deaths that resulted from conduct forming part of the Troubles, but not those that have been reviewed by the ICRIR following a request made under clause 9. Subsection (2) states that the ICRIR must take all reasonable steps to identify all deaths caused by conduct forming part of the Troubles, and to identify and obtain information about relevant deaths which is publicly available, and any other information about such deaths which is likely to be useful for the purposes of producing the historical record. Subsection (7) provides that the ICRIR may in particular take into account cost when deciding whether it is reasonable to take a particular step for the purposes of subsection (2).

122 Subsection (3) permits the ICRIR to contact people to ask for information in connection with the historical record, but subsection (4) prohibits the ICRIR from requesting information from certain people with a family or personal connection to the deceased person or the relevant events. This prohibition does not apply if the person is being asked in a professional capacity (subsection (5)).

## Clause 24: Publication of the historical record

123 Subsection (1) places a duty on the ICRIR to publish the record the ICRIR is required to produce in accordance with clause 2(4)(f) (“the historical record”). Subsection (2) provides that it is for the ICRIR to decide the manner in which the historical record is to be published and subsection (3) states that the ICRIR is not required to publish the historical record unless (and until) it can do so in accordance with clauses 4(1) and 18(2).

## Information

### Clause 25: Disclosure of information: general power and prohibitions

124 This clause provides that the ICRIR may disclose the information it holds to other people subject to certain prohibitions. The prohibitions are listed in subsections (4) to (9) as follows:

- A. Prohibition A applies where the Commissioner for Investigations has identified that the information is sensitive information (as defined in clause 53).
- B. Prohibition B applies where a relevant authority has informed the Commissioner for Investigations that the information is sensitive information.
- C. Prohibition C applies where the Secretary of State has informed the Commissioner for Investigations that the information is protected international information (as defined in clause 53).
- D. Prohibition D applies where the disclosure of the information would contravene the ICRIR’s duties under clause 4(1).
- E. Prohibition E applies where the disclosure of the information would be in breach of data protection legislation. “The data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018.
- F. Prohibition F applies where the disclosure of the information would be in breach of certain provisions of the Investigatory Powers Act 2016.

125 Subsection (3) provides that prohibitions A to D do not apply if the disclosure of information is otherwise permitted by Schedule 5 to this Bill. That schedule introduced by subsection (10) makes provision about permitted disclosures in relation to this clause and decisions to prohibit disclosures of sensitive information in final reports produced by the ICRIR. Subsection (11) introduces Schedule 6, which creates offences relating to disclosure of information.

## Clause 26: The ICRIR's use of information obtained by it

- 126 Subsection (1) sets out that information obtained by the ICRIR under clause 5 or through the exercise of police powers may only be used for the purpose of exercising any function of the ICRIR except that of producing the historical record.
- 127 Subsection (2) sets out that information obtained by the ICRIR under clause 14 may only be used for the purpose of, or in connection with, the review function.
- 128 Subsection (3) makes clear that subsections (1) and (2) do not authorise the ICRIR to supply information to any other person.
- 129 Subsection (4) stipulates that subsections (1) and (2) do not apply to information once it has been: a) contained in a final report produced in accordance with clause 15; or b) published by the ICRIR in accordance with the provisions of this Act.

## Clause 27: Identifying information that is subject to additional safeguards

- 130 This clause introduces Schedule 7 of this Bill, which makes provision about the identification of, sensitive, or prejudicial, or protected international information.

## Clause 28: Guidance and protocols relating to information

- 131 Subsection (1) provides that the Secretary of State may give guidance to the ICRIR, the Chief Constable of the Police Service of Northern Ireland, chief officers of police forces in Great Britain, the Police Ombudsman for Northern Ireland, the Director General of the Independent Office for Police Conduct, The Police Investigations and Review Commissioner, Northern Ireland departments and Scottish ministers about the identification of sensitive information. Subsection (2) provides that recipients of such guidance must have regard to it when identifying information in accordance with Schedule 7.
- 132 Subsection (3) provides that the Secretary of State may also give guidance to the ICRIR regarding the exercise of its functions in accordance with clause 4(1)(a). Subsection (4) sets out that the ICRIR must have regard to such guidance when exercising its functions.
- 133 Subsection (5) provides that an information disclosure protocol may be agreed between the ICRIR and one or more relevant authorities, or persons listed in paragraph 3(2) of Schedule 5. A definition of "information disclosure protocol" is provided at subsection (6). "Relevant authority" has the meaning given in clause 53.

## Clause 29: Regulations about the holding and handling of information

- 134 This clause confers a regulation-making power on the Secretary of State to make provision regarding the holding and handling of information by the ICRIR.
- 135 Subsection (2) allows the Secretary of State to:

A. make provision on how the ICRIR communicates the information it holds;



- B. make provision on how it holds and handles information;
  - C. regulate how the ICRIR may destroy or transfer information once it ceases to be held;
  - D. make provision about guidance or consultation;
  - E. confer functions on the Secretary of State any other person (as well as on the ICRIR);
  - F. create criminal offences.
- 136 Subsection (3) clarifies that this can include provision about sensitive, protected international information and prejudicial information, if identified as such by either a relevant authority, the Secretary of State or the Commissioner for Investigations.
- 137 Subsection (4) provides that any criminal offence created in regulations under this clause may only apply to the conduct of a person who is or at some point has been: a Commissioner of the ICRIR; an officer of the ICRIR; or an ICRIR contractor. It also states that any such offence may not impose a penalty greater than that imposed for an offence under Schedule 6 (Offences relating to disclosure of information) of this Act.
- 138 Subsection (5) deals with the Parliamentary procedure applicable to regulations made under this clause (negative).

## Biometric material

### Clause 30: Biometric material

- 139 This clause confers a regulation-making power on the Secretary of State to make provision for the preservation of a collection of biometric material, taken before 31 October 2013, which would otherwise fall to be destroyed. This collection may be used by the ICRIR in connection with its investigations.
- 140 Subsection (1) provides that the Secretary of State may lay regulations to designate a collection of biometric material for retention, which will prevent its destruction, before or, during the period of operation of the ICRIR (if its destruction would otherwise be required by any existing destruction provisions). This subsection also outlines that the material may be retained for the purpose of any of the functions of the ICRIR (except production of the historical record), and destroyed as set out in regulations.
- 141 Subsection (2) provides that if regulations require the retention of preserved material, the ICRIR must carry out periodic reviews of whether continued retention is necessary. Regulations must provide for preserved material to be destroyed no later than a reasonable period after the conclusion of the ICRIR's work (unless provision is made for earlier destruction).
- 142 Subsection (3) provides that regulations made under this section are subject to the negative Parliamentary procedure.

143 Subsection (4) provides a definition of “biometric material” as records of DNA profiles (not DNA samples) or fingerprint samples taken before 31 October 2013. The subsection lists all of the relevant “destruction provisions” for biometric material in existing legislation. It also defines “preserved material” as material which has not been destroyed due to the provisions at subsection (1)(b) (but which otherwise would have been).

### Clause 31: Review of the performance of the ICRIR’s functions

144 This clause provides that the Secretary of State must carry out a review of the ICRIR’s performance of its function set out in clause 2(4). The review must be carried out by the end of the ICRIR’s third year of operations, and the Secretary of State must lay a copy of the review before Parliament.

### Clause 32: Conclusion of the work of the ICRIR

145 This clause sets out provisions for the conclusion of the work of the ICRIR. Subsection (1) allows the Secretary of State to make secondary legislation winding up the ICRIR, if satisfied that there is no longer a need for the body to exercise its functions. Regulations made by the Secretary of State under subsection (1) may deal with the transfer of property, rights and liabilities (subsection(2)), and may repeal or otherwise amend provisions in Part 2 of the Bill (subsection (3)) with some exceptions.

146 Subsection (4) clarifies that consequential amendments included (by virtue of clause 52(5)(b)) in regulations made under subsection (1) may include amendments to parts 4 and 5 of this Bill or any legislation other than this Bill, whenever passed or made.

147 Subsection (5) states that the Secretary of State must consult the required consultees (defined in subsection (8) of this clause as the ICRIR and any other person the Secretary of State considers it appropriate to consult) when deciding whether to exercise any power to make regulations conferred by this clause and before making regulations under this clause. Subsection (6) provides that any regulations under this clause are subject to affirmative procedure in Parliament.

148 Subsection (7) provides that any draft instruments containing regulations under this clause are not to be considered a hybrid instrument for the purpose of parliamentary procedure.

## Part 3: Investigations, legal proceedings etc. and release of prisoners

### Criminal investigations and proceedings

#### Clause 33: No criminal investigations except through ICRIR reviews

- 149 Under subsection (1), no criminal investigations into any Troubles related offence may be initiated or continued, on and after the day on which this clause enters into force. This prohibition does not prevent the ICRIR exercising its functions (subsection (2)), nor does it prevent anyone producing a report or making a statement about a criminal investigation for family members or for public use, before the “relevant day”. This is defined in subsection (6) as the earlier of 1 May 2023 or the day on which clause 2(4) comes into force.
- 150 Under subsection (4) the head of each police force in the UK will be under duty to notify the Secretary of State of any criminal investigations of Troubles-related offences their forces are carrying out on the day before this clause comes into force.
- 151 Subsection (5) provides that the clause has effect subject to clause 37(3), which makes provision for investigation relating to criminal prosecutions started before commencement.

#### Clause 34: Grant of immunity: prohibition of criminal enforcement action

- 152 This clause covers individuals who have been granted immunity from prosecution in accordance with clause 18, and gives effect to that protection by providing (in subsection 2) that no criminal enforcement action may be taken against the individual in respect of the serious or connected Troubles-related offence(s) for which immunity has been granted. “Criminal enforcement action” has the meaning given by clause 37(2).

#### Clause 35: No grant of immunity: restrictions on criminal enforcement action

- 153 This clause applies in relation to a serious or connected Troubles-related offence by an individual unless the individual has been granted immunity from prosecution for that offence under clause 18.
- 154 Under subsection (2), criminal enforcement action may be taken against a person if:
- A. the Commissioner for Investigations has referred the person’s conduct to a prosecutor under clause 22 (2);
  - B. the offence is the suspected offence, or one of the suspected offences, notified to the prosecutor under clause 22(3)(a), or is another offence constituted by the conduct which has been referred; and
  - C. the criminal enforcement action is taken in connection with the referral.

155 Subsection (3) provides that this section has effect subject to clause 37(4), which is a savings provision in relation to pre-commencement prosecutions.

### Clause 36: Other Troubles-related offences: prohibition of criminal enforcement action

156 This clause makes provision in relation to Troubles-related offences which are not serious or connected offences (i.e. offences for which immunity from prosecution cannot be granted under clause 18). Under subsection (2), no criminal enforcement action may be taken against a person in respect of such offences. This prohibition is also subject to the exception created by clause 37(4) for pre-commencement prosecutions and other, related criminal enforcement action.

### Clause 37: General provision and saving for ongoing pre-commencement action

157 This clause contains general and savings provisions relating to Troubles-related criminal investigations and prosecutions. Subsection (1) sets out that any legislation or other law has no effect insofar as it authorises or requires a person to do anything that is prohibited by clauses 33 to 36.

158 Subsection (2) defines the term, "criminal enforcement action" for the purposes of clauses 34 to 36. "Criminal enforcement action" is taken against a person for an offence if: they are prosecuted for it, other criminal proceedings are brought or continued against the individual in relation to the offence, or the individual is arrested or otherwise detained in connection with the offence.

159 Subsection (3) is a savings provision, and provides that clause 33 does not prevent a criminal investigation being carried out other than the ICRR if a public prosecution of a person for the offence has already begun prior to commencement and the investigation is being carried out for the purposes of that prosecution.

160 Subsection (4) is another savings provision: clauses 35 and 36 do not prevent criminal enforcement action from being taken against a person in respect of an offence where a prosecution was started before entry into force, and where the criminal enforcement action related to that prosecution (for example, the enforcement of a sentence).

161 Subsection (5) clarifies that the savings provisions in subsections (3) and (4) do not affect the scope of provision which may be made in regulations under clause 56(4) in connection with the coming into force of clauses 33, 35 or 36.

162 Subsection (6) defines the term "public prosecution" and when such a prosecution should be taken to have "begun".

## Civil proceedings, inquests and police complaints

### Clause 38: Tort, delict and fatal accident actions

- 163 This clause prohibits relevant Troubles-related civil actions from being brought after the clause has been commenced (Subsection (2)) and from being continued if the claim is brought on or after the first reading of the Bill (Subsection (1)).
- 164 Subsections (3) to (5) define “relevant Troubles-related civil action”. They provide that such actions must (a) relate to an action to determine a claim arising out of Troubles-related conduct (defined in clause 1); (b) be founded on a cause of action under tort, delict, fatal accident legislation or equivalent foreign law grounds; and (c) have the time limit for bringing the action given in the limitation legislation listed in subsection (6).
- 165 Subsection (7) provides that the prohibition does not apply to an action where the court of first instance has given a final judgement on the matter in dispute before the clause comes into force.
- 166 Subsection (8) and (9) provide that where the prohibition prevents an action from being brought or continued, no related proceedings (other than costs proceedings) may be continued or begun once the clause has come into force.
- 167 Subsection (9) defines what is meant in relation to “costs proceedings”, “fatal accidents legislation”, “other jurisdiction”, “related proceedings”, and “trial”.
- 168 Subsection (10) gives effect to Schedule 8, which makes provision about the process for determining whether the prohibition applies.
- 169 Subsection (11) gives effect to Schedule 9 which disapplies the prohibition in relation to certain cross-border claims to which Directive 2008/52/EC (the Mediation Directive) to the extent its effect is preserved by the EU Withdrawal Agreement.

### Clause 39: Inquests, investigations and inquiries

- 170 Subsection (1) inserts four new sections after section 16 of the Coroners Act (Northern Ireland) 1959.
- 171 New section 16A sets out the process by which current inquests into deaths resulting directly from the Troubles will be closed. On and after the relevant day a coroner must not progress the conduct of any inquest which is not at an advanced stage as defined in Section 16D. Any inquest which has reached an advanced stage will continue under the coroner. All inquests into deaths resulting directly from the Troubles which have not reached an advanced stage will end.
- 172 Under new section 16B(1) a coroner dealing with inquests which were initiated and had reached an advanced stage before the relevant day and which are continuing can make a request to ICRIR for a review of the death. Once a request for a review is made, under 16B(2) the coroner may adjourn or discontinue the inquest. An adjournment can be made more than once and after any adjournment the coroner may resume the conduct of the inquiry.

- 173 New section 16C provides that on the day on which this Bill comes into force a coroner must not decide to hold an inquest into any Troubles-related death, and the Attorney General or Advocate General for Northern Ireland must not give a direction under section 14 of the Coroners Act (Northern Ireland) 1959 for the conduct of an inquest into any death resulting directly from the Troubles.
- 174 Section 16D applies to 16A-16C and defines a death that “resulted directly from the Troubles”, “Conduct forming part of the Troubles”, “relevant day”, “initiated” and “at an advanced stage”.
- 175 Subsection (2) introduces Schedule 10 which makes equivalent provisions for investigations and inquests in England and Wales (Part 1) and inquiries in Scotland (Part 2).

#### Clause 40: Police complaints

- 176 This clause inserts a new clause 50A to the Police (Northern Ireland) Act 1998. The new section 50A applies to complaints relating to Troubles-related conduct on and after the day this Bill comes into force, and states that Part 8 (Police complaints and disciplinary proceedings) of the Police (Northern Ireland) Act 1998 will cease to apply to complaints made before that day and will not apply to complaints made on or after that day (if the complaint relates to Troubles-related conduct, as defined in clause 1 of this Bill).
- 177 Subsection (2) of the new section 50A provides that on and after the day on which this Bill comes into force, the Chief Constable, the Board, the Director or the Department of Justice is to cease to deal with any complaint referred before that day under section 52(7) of the Police (Northern Ireland) Act 1998 insofar as the complaint relates to conduct forming part of the Troubles. Subsection (3) of the new section 50A states that “conduct forming part of the Troubles” has the same meaning as it is given in this Bill.

#### Clause 41: Prisoner release

- 178 This clause gives effect to Schedule 11, which makes provisions relating to prisoner release under the Northern Ireland (Sentences) Act 1998.

## Part 4: Memorialising the Troubles

#### Clause 42: Oral history

- 179 This clause makes provision for an oral history initiative, taking forward measures proposed in the Stormont House Agreement.
- 180 Subsection (1) requires any persons designated by the Secretary of State to carry out work in this part under clause 49 (the “designated persons”) to, within the initial period (one year beginning with a date specified in regulations made by the Secretary of State under clause 50), carry out a study of existing Troubles-related oral history collections in Northern Ireland and to analyse those collections to identify groups or communities that are found to be under-

represented in those collections. The designated persons are required to create or collect new Troubles-related oral history testimonies, especially relating to groups or communities that have been found to be historically under-represented in existing collections. Finally, subsection (1) requires the designated persons to encourage and facilitate public engagement with Troubles-related oral history records, including by making such records more publicly accessible, and also by making available on a website a catalogue of existing publicly available Troubles-related, oral history records that may be held elsewhere.

- 181 Subsection (2) requires the designated persons, in complying with subsection (1)(b), secure that appropriate assistance is provided to persons with an interest in creating, collecting or preserving Troubles-related oral history records.
- 182 Subsection (3) states that, when facilitating and encouraging public engagement with Troubles-related oral history records as required by subsection (1), the designated persons must organise exhibitions, events, and other public services.
- 183 Subsection (4) states that designated persons may exercise the functions under subsection (1) in relation to oral history records about events and conduct before or after the period of the Troubles; and, in and to the extent that they do so, this clause applies to such records as it applies to Troubles-related oral history records.
- 184 Subsection (5) defines that for the purposes of this clause, a group or community in Northern Ireland is under-represented in current collections if the oral history records in current collections do not appropriately reflect the prevalence of that group or community in Northern Ireland society during the period of the Troubles.
- 185 Subsection (6) defines terms used in this clause, including “under-represented”; “current collection”; “oral history record”; “Troubles-related oral history record”; and “publicly accessible”.
- 186 Subsection (7) provides that, for the purposes of work set out in this clause, oral history records can include those contributed by a person in the UK, Ireland or elsewhere.

#### Clause 43: The memorialisation strategy

- 187 This clause makes provision for a ‘memorialisation strategy’ - a report exploring existing and potential new ways of memorialising the Troubles in Northern Ireland.
- 188 Subsection (1) requires any organisations designated by the Secretary of State to carry out work in this part under clause 49 (the “designated persons”) to secure the carrying out of a study into, and the production and publication of a related report evaluating, relevant memorialisation activities that are currently taking place (“current memorialisation activities”). On the basis of this evaluation, the report must also include recommendations by the designated persons for new relevant memorialising initiatives in Northern Ireland (“new memorialisation activities”). This report must be published and presented to the Secretary of State within one year.

- 189 Subsection (2) defines “relevant memorialisation activities” as activities carried out in Northern Ireland for the purpose of making, commemorating, or providing information or education about events and conduct in Northern Ireland forming part of the Troubles, or about events and conduct in Northern Ireland occurring before or after the Troubles.
- 190 Subsection (3) gives the designated persons discretion in determining the extent to which memorialising activities that relate to events taking place before or after the Troubles should be considered when carrying out the study and making recommendations.
- 191 Subsection (4) states that the process by which the study is carried out and the recommendations are made must provide for consideration to be given to the following matters:
- A. how relevant memorialisation activities currently, or will in the future, promote reconciliation in Northern Ireland;
  - B. how relevant memorialisation activities currently are, or will in the future be, relevant to people living in Northern Ireland;
  - C. appropriate non-UK memorialisation activities.
- 192 Subsection (5) specifies that consideration must be given to whether establishing a new museum, memorial or similar project should be recommended.
- 193 Subsection (6) and subsection (7) requires the designated persons to facilitate public consultation on the memorialisation of the Troubles.
- 194 Subsection (8) defines the term “appropriate non-UK memorialisation activity”.

#### Clause 44: Response to the memorialisation strategy

- 195 Subsections (1) to (3) require the Secretary of State to consider and formally respond to any recommendations for new memorialising activities in Northern Ireland that are made in the report (the “memorialisation strategy”) provided for in clause 33. These responses must be published by the Secretary of State within one year of receiving the report, and following consultation with the First Minister and deputy First Minister of Northern Ireland.

#### Clause 45: Academic research

- 196 This clause makes provision for academic research and statistical analysis relating to the Troubles.
- 197 Subsection (1) requires that any organisations designated by the Secretary of State to carry out work in this part under clause 49 (the “designated persons”) must set out terms of reference for academic research into the Troubles within one year, and make sure the academic research is carried out in accordance with those terms of reference. The designated persons must secure that a report (the “academic report”) on the outcome of the academic research is



produced and published, with a copy given to the Secretary of State, before the end of the seventh year of the period of operation of the ICRIR.

- 198 Subsection (2) requires the designated persons to seek to work with a UK Research and Innovation (UKRI) council, for example the Arts and Humanities Research Council, in carrying out work set out in subsection (1). This may involve the UKRI delivering parts of this work on behalf of the designated persons, or in partnership with the designated persons.
- 199 Subsection (3) requires that the academic research set out in subsection (1) be carried out independently and in such a way as to secure public confidence in the endeavour.
- 200 Subsection (4) provides that the terms of reference may allow researchers to consider relevant events and conduct that took place before or after the Troubles as part of the academic research, and may make provision about the criteria for identifying the kinds of events and conduct before or after the Troubles into which academic research is to be carried out.
- 201 Subsection (5) provides that researchers must take account of ICRIR family reports.
- 202 Subsection (6) provides that the terms of reference must also require the academic research to include the production of an analysis of overarching themes emerging from relevant events and conduct including (in particular) an analysis of women and girls' experience of those events and conduct. The terms of reference may include provision about criteria for identifying the kinds of relevant events and conduct to be taken into account for the purposes of producing that analysis.
- 203 Subsection (7) requires that the terms of reference must require the researchers to carry out a statistical analysis of all ICRIR reports relating to a death and the historical record.
- 204 Subsection (8) requires that the statistical analysis, to the extent possible from ICRIR reports and the historical record, must set out the number of deaths recorded in those reports and that record, an overview of the biographical attributes of the deceased, and an overview of the circumstances of the deaths.
- 205 Subsection (9) defines various terms used in this clause.

#### Clause 46: Annual reports

- 206 Clause 46 makes provision for annual reports to be published by any persons designated by the Secretary of State to carry out the Troubles-related work programme (the "designated persons"). (The Troubles-related work programme means the functions imposed on the designated person under clauses 42, 43 and 45 (see clause 50)).

#### Clause 47: Carrying out the Troubles related work programme

- 207 Clause 47 makes provision relating to the carrying out of the Troubles-related work programme by designated persons.

- 208 Subsection (1) requires the designated persons to consider the need to ensure there is cross-community support for the way in which the work programme is carried out, and that a variety of views of the Troubles is taken into account in carrying out that programme.
- 209 Subsection (2) requires the designated persons to consider the views of the advisory forum, as set out in clause 48.
- 210 Subsection (3) states that designated persons may make arrangements about the way in which each of them will exercise its functions to secure that the Troubles-related work programme is carried out.
- 211 Subsection (4) requires that designated persons must publish any current operational arrangement as soon as practicable after they are made or amended.

### Clause 48: The advisory forum

- 212 This clause makes provision for an advisory form in connection with the Troubles-related work programme.
- 213 Subsection (1) requires that the designated persons use best endeavours to establish an advisory forum.
- 214 Under subsection (2), when establishing an advisory forum, designated persons must have regard to the following:
- A. the need to ensure that the membership of the advisory forum includes persons who represent the views of victims and survivors of events and conduct forming part of the Troubles;
  - B. the need to ensure that the membership of the advisory forum is balanced as respects those members who are associated with the different communities in Northern Ireland.
- 215 Subsection (3) provides that the duties imposed on designated persons by subsections (1) and (2) do not apply if:
- A. those designated persons have taken the actions required by those duties before the specified day, and
  - B. an advisory forum established by those persons in compliance with those duties is in existence immediately before the specified day.
- 216 Subsection (4) requires that any arrangements establishing the advisory forum, including the details of its membership, are published by the designated persons as soon as possible.

## Clause 49: Designated persons and funding

- 217 This Clause concerns the designation of persons (including organisations) to carry out work in this Part by the Secretary of State (the “designated persons”).
- 218 Subsection (1) and subsection (4) gives the Secretary of State the power to designate (by regulations subject to negative procedure) a person to carry out the Troubles-related work programme. A person may only be designated under this clause if the Secretary of State is satisfied that the person would make a significant contribution to the performance of the functions under clauses 42,43 and 45.
- 219 Under subsection (2), when deciding whether to designate a person the Secretary of State must have regard to whether the person has appropriate support by different communities in Northern Ireland and whether the person will act independently.
- 220 Under subsection (3), the regulations designating persons (under subsection (1)) may provide that a designated person is only required to perform a particular function or aspect of a function, in relation to the functions under clauses 42, 43, and 45. Regulations may also provide that a power of direction is not to be exercised in relation to designated organisations or their staff, in carrying out functions under this part.
- 221 Subsection (5) gives the Secretary of State the power to make payments or provide other resources to the designated persons.

## Clause 50: Interpretation of this Part

- 222 This clause provides interpretations of expressions used in this Part of the Bill, including “initial period”, “designated persons”, and “Troubles-related work programme”. This clause (under subsection (1)) also provides that regulations made by the Secretary of State (under clause (49)) may specify a date on which the Troubles-related work programme is to begin (the “specified day”).

## Part 5: Final Provisions

### Clause 51: Consequential provision

- 223 Subsection (1) gives effect to Schedule 12, which makes amendments to existing primary legislation. Subsection (2) provides the appropriate national authority, defined in subsection (3) as the Secretary of State, the Department of Justice in Northern Ireland or the Scottish Ministers, with the power to, by regulations, make provisions considered appropriate in consequence of this Bill.
- 224 Subsection (4) provides that regulations under subsection (2) may amend legislation. Subsections (5) and (6) clarify when regulations made under subsection (2) are subject to affirmative or negative procedures.

225 Subsection (7) provides that the power for the Department of Justice in Northern Ireland or the Scottish Ministers to make regulations under subsection(2) is subject to clause 42(6) or (7) of this Bill.

226 Subsection (8) allows the Secretary of State to make regulations to replace any reference in this Bill to the commencement of a provision of the Bill or the date of First Reading with the actual date on which the provision comes into force. This will enable a person reading the Bill to have a clear idea of whether the provision is currently in force.

### Clause 52: Regulations

227 This clause makes provisions for regulations made under this Bill. Subsection (1) states that any regulations made by the Secretary of State are to be made by statutory instrument.

228 Subsection (2) provides that any regulations made under this Bill by the Department of Justice in Northern Ireland are to be made by statutory rule in line with the relevant legislation cited.

229 Subsections (3) and (4) set out the conditions for making regulations by “affirmative procedure” and “negative procedure” respectively.

230 Subsection (5) provides that regulations under this Bill are able to make different provisions for different purposes or cases; incidental, supplementary or consequential provision; and transitional or transitory provision or savings.

231 Subsection (6) clarifies that regulations made by the Department of Justice in Northern Ireland may only make transferred provision, or make reserved provision with the consent of the Secretary of State. Subsection (7) clarifies that regulations made by the Scottish Ministers may only make provision that would be within the legislative competence of the Scottish Parliament, if it were contained in an Act of the Scottish Parliament.

### Clause 53: Interpretation

232 This clause provides definition and explanation of various terms used in this Bill.

### Clause 54: Application to the Crown

233 This clause confirms that this Bill binds the Crown.

### Clause 55: Extent

234 Subsection (1) sets out the territorial extent of the Bill. It extends to England and Wales, Scotland and Northern Ireland, except as specified in subsections (2) to (5).

### Clause 56: Commencement

235 This clause makes provisions about the coming into force of the provisions of the Bill.

### Clause 57: Short title

236 This clause sets out the short title of the Bill.

## Schedules

### Schedule 1: The ICRIR, the Commissioners and ICRIR officers

- 237 Part 1 of Schedule 1 makes provision about the ICRIR, including its legal status; powers; regulation of its proceedings; delegation of its functions and exercise of its functions by Commissioners; and the sealing and proving of documents by the ICRIR.
- 238 Part 2 of Schedule 1 makes provision about the Commissioners of the ICRIR, including the number of Commissioners; how Commissioners are to be appointed; who is excluded from being a Commissioner as a result of holding public office; the length of term for Commissioner appointments; that Commissioners may be required to disclose conflicts of interest; and the resignation and removal of Commissioners.
- 239 Part 3 of Schedule 1 provides for the Chief Commissioner to delegate their functions to other Commissioners or ICRIR officers.
- 240 Part 4 of Schedule 1 provides for the Commissioner for Investigations to delegate their functions to other Commissioners or ICRIR officers, though they cannot sub-delegate a function which has been delegated to them by the Chief Commissioner under Part 3 of Schedule 1. It also provides that the Commissioner for Investigations is not to be regarded as in police service for the purposes of certain trade union legislation.
- 241 Part 5 of Schedule 1 makes provision about ICRIR Officers, including their number and terms of employment; the secondment of ICRIR officers; who is excluded from being an ICRIR Officer as a result of holding public office; the application to ICRIR officers of legislation dealing with the rehabilitation of offenders; the liability of the ICRIR for unlawful conduct by its Officers; and that ICRIR officers are not to be regarded as in police service for the purposes of certain trade union legislation.

### Schedule 2: Operational powers of ICRIR officers

- 242 Schedule 2 provides that a designated ICRIR officer has the powers and privileges of a constable designated to certain ICRIR officers are to be held throughout the United Kingdom and correspond to the powers and privileges of a constable in England and Wales, Northern Ireland, and Scotland respectively when the ICRIR officer is in that territory. This is subject to the following:
- A. section 6(3)
  - B. a designated ICRIR officer may only exercise the powers and privileges of Scottish constable where: i) a Scottish general authorisation is in force, and the powers and privileges are exercised in accordance with that authorisation; and ii) a Scottish operational authorisation is in force in relation to a particular operation, and the powers are exercised in connection with that operation and accordance with the authorisation.

- C. The powers of ICRIR officers can also be restricted by limitations written into the designation itself (on the powers themselves, the purposes for which they are exercised, or the duration of the designation).

- 243 Any person who assaults, resists, obstructs, impersonates or impedes a designated ICRIR officer in the execution of that ICRIR officer's duty, or a person assisting a designated ICRIR officer in the execution of that ICRIR officer's duty is guilty of an offence.

### Schedule 3: Family members

- 244 This schedule provides detailed guidance as to who may be considered a close family member and relevant family member of a victim in relation to requests for reviews into a death. As set out in this schedule, a close family member is a spouse, a civil partner, a co-habitee, a child, a step-child, a parent, a step-parent, a brother or sister, a half-brother or half-sister, or a step-brother or step-sister.

### Schedule 4: Supply of information: enforcement

- 245 Part 1 of Schedule 3 makes provision about the enforcement of notices under section 11.
- 246 Paragraph 1 provides that the ICRIR may require a person to pay a penalty of up to £1,000 if the ICRIR is satisfied, on the balance of probabilities, that the person has failed to comply with a notice under section 11. No such penalty can be imposed if the person shows there was a reasonable excuse for the failure to comply with the notice.
- 247 Paragraph 2 provides that if the ICRIR decides to require a person to pay a penalty they must give the person a penalty notice, and that the penalty notice must be in the form specified in sub-paragraph (2).
- 248 Paragraph 3 gives the recipient of a penalty notice the right to object to it by giving notice to the ICRIR. The ICRIR must consider the notice of objection and notify the recipient of the ICRIR's decision in writing within 70 days of the penalty notice, or longer if agreed between the ICRIR and the recipient. The notification of the ICRIR's decision in respect of the objection must be consistent with sub-paragraph (6).
- 249 Paragraph 4 gives the recipient of a penalty notice the right to appeal to the county court (sheriff in Scotland) against a penalty notice which has not been cancelled in response to their objection under paragraph 3.
- 250 Paragraph 5 provides how the recoverability of a penalty is to be treated depending on whether the person is in the jurisdiction of England and Wales, Scotland or Northern Ireland, and that the ICRIR must pay any penalty payments received into the Consolidated Fund.
- 251 Part 2 of Schedule 3 makes it a criminal offence to distort evidence provided to the Commissioner for Investigations, or to otherwise prevent evidence from being given. It also makes it a criminal offence for a person to intentionally suppress, alter or destroy a document

that the person thinks is a document that the Commissioner for Investigations would wish to be provided with. Proceedings for the criminal offences can only be instituted with the consent of the relevant Director of Public Prosecutions in either England and Wales or Northern Ireland.

## Schedule 5: Permitted disclosures of information

### Part 1 - Disclosures that are permitted

252 Part 1 of Schedule 5 sets out which disclosures of information are permitted.

#### **Disclosure of any information to the Secretary of State**

253 Paragraph 2 sets out that the Body is permitted to disclose any information to the Secretary of State.

#### **Disclosure of sensitive information to certain recipients**

254 Paragraph 3 sets out that disclosures to certain individuals are permitted so long as the Body notifies the Secretary of State, who then will either prohibit or permit the disclosure before the end of the relevant ten day period allotted for response. Paragraph 3(1) outlines that a disclosure of sensitive information by the Body is permitted to the individuals listed at paragraph 3(3) if the Secretary of State permits the Commissioner to do so. The individuals at paragraph 3(3) are listed at 3(1)(a) to 3(1)(e)(iv), and include the Director of Public Prosecutions Northern Ireland, the Director of Public Prosecutions, the Lord Advocate, a member of PSNI, a member of the police force in Great Britain, a coroner in NI or England and Wales who is a High Court judge in either jurisdiction, a county court judge in NI, a Circuit Judge in England or Wales; or finally, a Sheriff in Scotland. Paragraph 3(4) defines the relevant 10 day decision period as 10 working days from when the Commissioner notifies the Secretary of State to a possible disclosure, or any reasonable period which the Secretary of State wishes to take in order to make the decision. Paragraph (3)5 defines what is meant by “working day”.

#### **Disclosure of sensitive information notified in advance to the Secretary of State**

255 Paragraph 4(1) sets out that the Body may disclose sensitive information so long as they notify the Secretary of State that they intend to make the disclosure, and either the Secretary of State permits the disclosure during the relevant decision period. It is established at paragraph 4(2) that the Secretary of State may only prohibit the disclosure if, in their view, it could harm national security interests.

256 Further, paragraph 4(3) sets out that in such cases the Secretary of State is required to provide the reasons for prohibiting disclosure, so long as these do not themselves risk harming national security interests. A definition for the ‘relevant decision period’ is provided at paragraph 6.

## **Disclosure of protected international information notified in advance to the Secretary of State**

257 Paragraph 5 extends Paragraph 4(1) to apply to the disclosure of protected international information. Further, paragraph 4(2) sets out that the Secretary of State may only prohibit the disclosure if, in their view, the disclosure could harm international relations.

### **The “relevant decision period”**

258 Paragraph 6 defines the “relevant decision period” in relation to a proposed disclosure of information by the ICRIR. This is defined as 60 days or any reasonable longer period specified by the Secretary of State within that 60 day notice period. Paragraph 6(2) adds that if there is an appeal and the court orders the Secretary of State to remake a decision the period will end when that appeal is concluded.

## **Part 2 - Appeals against decisions not to permit disclosures**

### **Application of this Part**

259 Paragraph 7 outlines that this section describes what happens if the Secretary of State is notified by the ICRIR of a proposed disclosure, and decides not to permit it.

### **Affected report to include statement of Secretary of State’s decision**

260 Paragraph 8 sets out that in this scenario there must be a statement attached to the report to outline that the Secretary of State has decided not to permit the disclosure, before setting out the reasons for doing so. It adds that if an appeal is made and the Secretary of State remakes his decision in line with direction from the court, a new report must be issued by the ICRIR.

### **Initial appeals**

261 Paragraph 9 defines ‘initial appeals’ as appeals to the relevant court against the Secretary of State’s decision not to permit a proposed disclosure. It sets out that in these appeals, the court must apply principles applicable on an application for a judicial review, and gives the court the power to quash the Secretary of State’s original decision. It directs that if the court does so, it must order the Secretary of State to remake the decision within 60 days or any reasonable longer period that the court specifies. If the court does not quash the decision, it must dismiss the appeal.

### **Bringing an initial appeal**

262 Paragraph 10 outlines that the person who requested the review related to the affected report is allowed to bring an initial appeal, as well as a person who would be eligible to request a review. It sets out that an initial appeal must be brought within the period of 28 days beginning with the day on which the affected report is published, or if the report is not published, 28 days from the day on which the affected report is given to the person who requested the review.



### **Further appeal against an initial appeal**

263 Paragraph 11 sets out the process for bringing a ‘further appeal’ against any determination made in the ‘initial appeal.’ It outlines that this may only happen with leave from the court, and that the court may only allow further appeals if it would allow some important point of practice or principle to be raised - or if there is another compelling reason for the further appeal to be heard.

### **Application of the Justice and Security Act 2013**

264 Paragraph 12 describes how initial and further appeals are to be treated as section 6 proceedings within the meaning of the Justice and Security Act 2013, for the purposes of sections 8 to 14 of the same Act.

### **Interpretation**

265 Paragraph 13 sets out the interpretation of various terms used in the above sections on appeals.

## **Schedule 6: Offences relating to disclosure of information**

### **Current and former Commissioners, ICRIR officers and ICRIR contractors**

266 This Schedule sets out the offences committed if information is disclosed contrary to the rules established by clause 18.

267 Paragraph 1 sets out that an offence is committed if a current or former Body member discloses information which they obtained in their capacity as a Body member, in breach of a relevant prohibition. It is set out in paragraph 1(2) that such a disclosure can have occurred within or outside of the United Kingdom. Paragraph 1(3) establishes that communication of information between persons holding relevant positions does not constitute disclosure. Paragraph 1(4) establishes that it is a valid defence to claim that the individual, at the time of the disclosure, had no reasonable cause to believe that such a disclosure was in breach of a prohibition.

### **Penalties**

268 Paragraph 2 sets out that a person guilty of an offence under this Schedule is liable to imprisonment, a fine, or both, in line with the limits established in paragraph 2(a) to 3(d): that is on conviction on indictment, imprisonment for a term not exceeding two years; on summary conviction in Northern Ireland, England and Wales imprisonment for a term not exceeding six months, and on summary conviction in Scotland imprisonment for a term not exceeding twelve months.

## **Interpretation**

269 Paragraph 3 provides a number of definitions and supplementary explanations for terminology used in this section. Namely, it defines the terms ‘ICRIR contractor’ and ‘relevant prohibition on disclosure.’

## **Schedule 7: Identification of sensitive, prejudicial or protected international information**

### **Part 1 - The ICRIR: Identification of sensitive or prejudicial information**

270 The Commissioner for Investigations must, from time to time, identify any information held by the ICRIR which, in their opinion, is sensitive or prejudicial information. This is not required where a relevant authority has notified the Commissioner for Investigations that the authority has identified the information as such.

271 Where a relevant authority is proposing to make any information available to the ICRIR, the relevant authority must identify any information which, in their opinion, is sensitive or prejudicial information. When making the information available to the ICRIR, the relevant authority must notify the Commissioner for Investigations of this.

272 Where a person other than a relevant authority is proposing to make any information available to the ICRIR, the person must identify any information which, in their opinion, is sensitive or prejudicial information. When making the information available to the ICRIR, that person must notify the Commissioner for Investigations of this.

### **Part 2 - Relevant authorities: Identification of sensitive or prejudicial information**

#### **Information made available by a relevant authority**

273 Paragraph 2 explains that a relevant authority must identify any information it is making available to the ICRIR that is either sensitive or prejudicial information, by notifying the Commissioner for Investigations.

#### **Information made available by other persons**

274 Paragraph 3 outlines that the same process as described in paragraph 2 applies when a person other than a relevant authority is proposing to make information available to the ICRIR.

#### **Notifications under this Schedule**

275 Paragraph 4 clarifies that when a notification of information is made under paragraph 2 or paragraph 3, it must be made clear through a statement whether a relevant authority believes the information is sensitive information, prejudicial information, or both.

### Part 3 - Secretary of State: Identification of protected international information

- 276 Paragraph 5 outlines that the Secretary of State may make the Commissioner for Investigations aware of any information held by the ICRI, or information which anyone is proposing to make available to the ICRI, is in the Secretary of State's opinion, protected international information.

### Schedule 8: Determination of whether the prohibition on civil actions applies

- 277 This schedule makes provision about how the courts will determine whether prohibition on civil actions applies.
- 278 Paragraph 2 entitles the Secretary of State to notice of any Troubles-related civil action that it appears may contravene the prohibition. It also confers a power on the Secretary of State (or a person nominated by them) to be joined as a party to the action and take part in proceedings to determine the question of whether the prohibition applies.
- 279 Paragraph 3 sets out how the court must determine whether the prohibition on civil actions applies where sufficient evidence has been adduced to raise an issue as to whether the prohibition applies. Sub-paragraph (3) provides that the court must assume that the action contravenes the prohibition until it is proved that the action does not and sub-paragraph (4) provides that the court must dismiss the action where the action contravenes the prohibition. However, sub-paragraphs (5) and (6) preserve the discretion of the court to award costs where the action is dismissed. Sub-paragraphs (7) and (8) provide that the court must determine the question of whether the prohibition is contravened before considering other questions unless the court considers there are exceptional reasons not to do so. Sub-paragraph (8)(a)(ii) also permits the court to consider questions of limitation at the same time it considers whether the prohibition is contravened.
- 280 Paragraph 4 clarifies that the prohibition on civil actions does not prevent any legal proceedings relating to a determination by a court that a civil action contravenes the prohibition (for instance, an appeal seeking to overturn a decision that the prohibition applies to an action).

### Schedule 9: Civil actions to which the 2008 Mediation Directive applies

- 281 Paragraph 1(1) outlines that the prohibition on civil actions does not apply to certain actions which have been subject to cross-border mediation to which Directive 2008/52/EC (the Mediation Directive) applies by virtue of Article 69(1)(b) of the EU Withdrawal Agreement.
- 282 Paragraph 1(2) provides that in such cases the prohibition on civil actions has effect as if it instead required that an action which involved prior cross-border mediation (a) may not be continued unless it was brought on or after the later of the day of the Bill's first reading and the end of the period of eight weeks after the mediation ends; and (b) may not be brought on

or after the day on which section 29 ends unless it is brought before the end of the period of eight weeks after the mediation ends.

## Schedule 10: Investigations, inquests and inquiries in England and Wales and Scotland

### Part 1 - England and Wales: Investigations and Inquests

#### **Coroners and Justice Act 2009**

283 Paragraph 1(1) inserts 11A into the Coroners and Justice Act 2009. This schedule provides for existing and new investigations and inquests into troubles related deaths in England and Wales to end unless they have had a date set for final hearing at the date the ICRIR becomes operational.

284 Schedule 1A paragraph 1(1) to 1(4) relates to ongoing inquests and investigations. On or after the relevant day a coroner must not progress the inquest or investigation. Furthermore as soon as practicable the senior coroner responsible for conducting the investigation must discontinue the investigation and the inquest forming part of the investigation.

#### **ICRIR review: existing investigations and inquests**

285 Schedule 1A paragraph 2(1) applies to investigations into Troubles-related deaths which, immediately before the relevant day had reached an advanced stage and where the senior coroner responsible makes a request to ICRIR for a review of the death under section 9(6)(b)(i) of this Bill.

286 Once a request is made, under Paragraph 2(2) the coroner may adjourn or discontinue the inquest. An adjournment can be made more than once and after any adjournment the coroner may resume the conduct of the inquiry. Paragraph 2(3) sets out the Sections of the Coroners and Justice Act which are subject to this paragraph.

#### **New investigations and inquests**

287 Schedule 1A paragraph 3(1) to 3(4) relates to new investigations and inquests into Troubles-related deaths. On the day which paragraph 1(2) of Schedule 10 to this Bill comes into force there is a duty not to begin to apply to a senior coroner in respect of a Troubles-related death. Schedule 1A Paragraph 3(3) prevents a senior coroner from making a request to another senior coroner to conduct an investigation; no senior coroner should agree to such a request. Schedule 1A paragraph 3(4) prevents the Chief Coroner from giving a direction to a senior coroner to conduct an investigation into a Troubles-related death.

#### **Interpretation**

288 Schedule 1A paragraph 4 defines a death that “resulted directly from the Troubles”, “conduct forming part of the Troubles”, “at an advanced stage”, “inquest”, “investigation” and “relevant day”.

## **Coroners Act 1988**

289 Paragraph 2(1) amends section 13 of the Coroners Act 1988 inserting subsection (5) to prevent the section from applying to a Troubles-related death.

290 Paragraph 2(2) applies Part 1 of Schedule 23 to the Coroners and Justice Act 2009 to section 13(5).

## **Part 2 - Scotland: Inquiries and Investigations**

### **Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016**

291 Paragraph 3 inserts Schedule A1 which makes provision about inquiries and investigations into Troubles-related deaths into the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.

### **Obligatory discontinuance of existing inquiries and investigations**

292 Paragraph 1 of Schedule A1 applies to an inquiry into a Troubles-related death that was initiated before the relevant date, unless the inquiry is at an advanced stage. On and after this date the sheriff must not progress the conduct of the inquiry and, as soon as is practical, the sheriff must discontinue the inquiry.

293 Subsection 5 applies the provisions in this paragraph to section 1(1) and section 1(2) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.

### **ICRIR review: existing inquiries and investigations**

294 Paragraph 2 applies where an inquiry into a Troubles-related death was initiated before the relevant day, is at an advanced stage, and where the sheriff who is responsible for conducting the inquiry makes a request to ICRIR for a review of the death under section 9(6)(d)(i) of this Bill.

295 Once a request is made, under Paragraph 2(2), the sheriff may adjourn or discontinue the inquiry. An adjournment can be made more than once and after any adjournment the sheriff may resume the conduct of the inquiry. Paragraph 2(3) sets out the Sections of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 which are subject to this paragraph.

### **New inquiries and investigations**

296 Paragraph 3 provides that on or after the day on which these provisions come into force the Lord Advocate must not cause an inquiry to be held into any Troubles-related death, nor must the procurator fiscal give notice to the sheriff that an inquiry into a Troubles-related death is to be held. Further inquiry proceedings must not be held in accordance with clause 30(2) in relation to a Troubles related death.

## **Interpretation**

297 Paragraph 4 defines “Troubles related death”, “Troubles-related conduct”, “initiated”, “at an advanced stage” and “relevant day”.

## **Schedule 11: Prisoner release**

298 This Schedule sets out the amendments to the Sentences (Northern Ireland) Act 1998 under which those convicted of scheduled offences in Northern Ireland (or, for those sentenced outside Northern Ireland, similar offences), can apply for early release. The early release scheme was established following the Belfast Agreement 1998 which made a commitment to allow qualifying prisoners to apply to the Sentence Review Commissioners for early release on licence.

### **Amendment and saving of legislation**

299 Paragraph 1(1) and paragraph 1(2) provides that the Northern Ireland (Sentences) Act 1998 is amended in accordance with the following paragraphs of this Schedule. These amendments do not apply to any application made under section 3(1) of the Northern Ireland (Sentences) Act 1998 before this Schedule comes into force.

### **Qualifying offences: offences committed between 1966 and 1973**

300 The existing early release scheme in the Sentences Act applies to persons convicted of “scheduled offences” between 8 August 1973 and 10 April 1998. “Scheduled offences” are those specified in the Northern Ireland (Emergency Powers) Act 1973 (“the 1973 Act”) and subsequent Northern Ireland Emergency Powers Acts. Paragraph 2 extends the early release scheme to offences committed on or after 1 January 1966 and before 8 August 1973 and which arose out of any conduct forming part of the Troubles. However, these offences cannot be “scheduled offences” because that concept was created by the 1973 Act. Subsection 7A is therefore inserted into the Sentences Act to enable offences committed prior to 8 August 1973 to be certified by the Director of Public Prosecutions for Northern Ireland as an offence which, had it been committed on 8 August 1973, would have been a scheduled offence within the meaning of the 1973 Act.

### **Offences equivalent to qualifying offences: offences committed between 1966 and 1973**

301 Paragraph 3 extends the early release scheme to sentences passed outside Northern Ireland for offences committed on or after 1 January 1966 and before 8 August 1973 which arose out of any conduct forming part of the Troubles. As with the existing early release scheme, the appropriate Law Officer from England, Wales or Scotland must certify that an offence is one which, if it had been committed in Northern Ireland on 8 August 1973, would have been a scheduled offence within the meaning of the 1973 Act.

### **Length of sentence**

302 The existing early release scheme in the Sentences Act provides that a person must be serving a sentence of imprisonment for life or for a term of at least 5 years in order to be eligible to apply. Paragraph 4 removes that condition to enable a person serving a sentence of any length to apply, and allows two or more consecutive sentences to be treated as a single sentence as long as they were passed on the same occasion in Northern Ireland for a qualifying offence.

### **Release of prisoners**

303 The existing early release scheme provides that, if a person's application for early release is successful, they must serve a minimum term of their sentence before being released. Paragraph 5 replaces and repeals several provisions of the Sentences Act with the effect of removing any minimum sentence needed to be served before release. It inserts new section 4 into the Sentences Act, which provides that a person granted early release has a right to be released on licence by the end of the day after the day on which they receive a declaration to that effect (unless that day falls on a weekend or certain public holidays).

### **Interpretation of the 1998 Act**

304 Section 13A inserted into the Sentences (Northern Ireland) Act 1998 defines "conduct forming part of the Troubles" as having the same meaning as in section 1 of this Act.

## **Schedule 12: Amendments**

305 This Schedule amends existing legislation.

## **Commencement**

306 Clause 56 sets out how the different provisions will be commenced.

307 Part 1 and Part 5 (except clause 51(1) and Schedule 12) come into force on the day the Act is passed.

308 Part 3, Part 2 of Schedule 12, and Section 51(1) so far as it relates to Part 2 of Schedule 12, come into force at the end of the period of two months after the Act is passed (with day one being the day on which the Act is passed).

309 Otherwise, this Act comes into force on such day or days as the Secretary of State may by regulations made by statutory instrument appoint.

## **Financial implications of the Bill**

310 The Government expects that the provisions of the Bill will have direct financial implications, but that these financial implications will be met by funding previously set aside by the UK

Government. The Government expects that, during the five year period of operation of the ICRIR, the Secretary of State will spend (on average) £35 to £50 million per year in providing resources to the ICRIR (under clause 2(7)) and to the designated persons carrying out memorialisation activities (under clause 49(5)). The ICRIR will be wholly funded by the Secretary of State using that power. After the period of operation of the ICRIR, the Secretary of State is expected to incur some continuing costs in providing resources to the designated persons, but those costs are not expected to be substantial.

## Parliamentary approval for financial costs or for charges imposed

- 311 A money resolution is required for the Bill. A money resolution is required where a Bill authorises new charges on the public revenue – broadly speaking, new public expenditure.
- 312 Additional public expenditure will be incurred by the Secretary of State in providing resources (under clause 2(7)) to the ICRIR or (under (clause 49(5)) to the “designated persons” carrying out functions under Part 4. If a public authority becomes a “designated person” for the purposes of Part 4, additional public expenditure may be incurred by virtue of the public authority carrying out new functions under Part 4. If the ICRIR is wound up using the powers conferred by clause 32, the Secretary of State or another public authority may take on the liabilities of the ICRIR, giving rise to additional public expenditure.
- 313 No ways and means resolution is required for the Bill, because the Bill does not authorise any new taxation or other similar charges. However, paragraph 5(6) of Schedule 4 requires civil penalties imposed under Part 1 of that Schedule to be paid into the Consolidated Fund, and so a paying in resolution is included in the money resolution.

## Compatibility with the European Convention on Human Rights

- 314 Section 19 of the Human Rights Act 1998 requires a Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with Convention rights (as defined by section 1 of that Act).
- 315 The Secretary of State for Northern Ireland has made the following statement:
- 316 “In my view the provisions of the Northern Ireland Troubles (Legacy and Reconciliation) Bill are compatible with Convention rights.”
- 317 The Government has published a separate ECHR memorandum with its assessment of the compatibility of the Bill’s provisions with the Convention rights: this memorandum is available on the Government website.



# Environmental Law for the purposes of the Environment Act 2021

318 The Secretary of State is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

## Related documents

319 The following documents are relevant to the Northern Ireland (Legacy and Reconciliation) Bill, and can be read at the stated locations:

- Report of the Consultative Group on the Past, 23 January 2009:  
[https://cain.ulster.ac.uk/victims/docs/consultative\\_group/cgp\\_230109\\_report.pdfons/good-law](https://cain.ulster.ac.uk/victims/docs/consultative_group/cgp_230109_report.pdfons/good-law)
- Stormont House Agreement:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/390672/Stormont\\_House\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf)
- Draft Stormont House Agreement Bill:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/706283/Draft\\_Northern\\_Ireland\\_Stormont\\_House\\_Agreement\\_Bill.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/706283/Draft_Northern_Ireland_Stormont_House_Agreement_Bill.pdf)
- A summary of the responses to ‘Addressing the legacy of the past - moving Northern Ireland forward’ July 2019:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/814805/Addressing\\_the\\_Legacy\\_of\\_the\\_Past\\_-\\_Analysis\\_of\\_the\\_consultation\\_responses.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814805/Addressing_the_Legacy_of_the_Past_-_Analysis_of_the_consultation_responses.pdf)
- Northern Ireland Affairs Committee report ‘Addressing the Legacy of Northern Ireland’s Past: the Government’s New Proposals (Interim Report)’ October 2020:  
<https://publications.parliament.uk/pa/cm5801/cmselect/cmniaf/329/32902.htm>
- Addressing the Legacy of Northern Ireland’s Past: UK Government Response to NIAC Inquiry interim report January 2021:  
<https://publications.parliament.uk/pa/cm5801/cmselect/cmniaf/1153/115302.htm>
- Command Paper ‘Addressing the legacy of Northern Ireland’s past’ July 2021:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1002140/CP\\_498\\_Addressing\\_the\\_Legacy\\_of\\_Northern\\_Ireland\\_s\\_Past.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002140/CP_498_Addressing_the_Legacy_of_Northern_Ireland_s_Past.pdf)

## Annex- Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
<b>Part 1: The Troubles</b>							
1	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>Part2: ICIR</b>							
2	Yes	Yes	No	Yes	Yes	Yes	Yes
3	Yes	Yes	No	Yes	Yes	Yes	Yes
4	Yes	Yes	No	Yes	Yes	Yes	Yes
5	Yes	Yes	No	Yes	Yes	Yes	Yes
6	Yes	Yes	No	Yes	Yes	Yes	Yes
7	Yes	Yes	No	Yes	Yes	Yes	Yes
8	Yes	Yes	No	Yes	Yes	Yes	Yes
9	Yes	Yes	No	Yes	Yes	Yes	Yes
10	Yes	Yes	No	Yes	Yes	Yes	Yes
11	Yes	Yes	No	Yes	Yes	Yes	Yes
12	Yes	Yes	No	Yes	Yes	Yes	Yes
13	Yes	Yes	No	Yes	Yes	Yes	Yes
14	Yes	Yes	No	Yes	Yes	Yes	Yes
15,16 and 17	Yes	Yes	No	Yes	Yes	Yes	Yes
18,19,20,21	Yes	Yes	No	Yes	Yes	Yes	Yes
22	Yes	Yes	No	Yes	Yes	Yes	Yes
23 and 24	Yes	Yes	No	Yes	Yes	Yes	Yes
25	Yes	Yes	No	Yes	Yes	Yes	Yes
26	Yes	Yes	No	Yes	Yes	Yes	Yes
27	Yes	Yes	No	Yes	Yes	Yes	Yes
28	Yes	Yes	No	Yes	Yes	Yes	Yes
29	Yes	Yes	No	Yes	Yes	Yes	Yes

30	Yes	Yes	No	Yes	No	Yes	Yes
31	Yes	Yes	No	Yes	Yes	Yes	Yes
32	Yes	Yes	No	Yes	Yes	Yes	Yes
<b>Part 3: Limitations of Legal Proceedings etc, Prisoner Release</b>							
33-37	Yes	Yes	No	Yes	Yes	Yes	Yes
38	Yes	Yes	No	Yes	Yes	Yes	Yes
39	Yes	Yes	No	Yes	Yes	Yes	Yes
40	No	No	No	No	No	Yes	Yes
41	No	No	No	No	No	Yes	Yes
<b>Part 4: Memorialising the Troubles</b>							
42 -50	No	No	No	No	No	Yes	Yes
<b>Part 5: Final Provisions</b>							
51	Yes	Yes	No	Yes	Yes	Yes	Yes
52	Yes	Yes	No	Yes	Yes	Yes	Yes
53-57	Yes	Yes	No	Yes	Yes	Yes	Yes

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# **NORTHERN IRELAND TROUBLES (LEGACY AND RECONCILIATION) BILL**

## **EXPLANATORY NOTES**

These Explanatory Notes relate to the Northern Ireland Troubles (Legacy and Reconciliation) Bill as introduced in the House of Commons on 17<sup>th</sup> May 2022 (Bill 10).

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Ordered by the House of Commons to be printed, 17<sup>th</sup> May 2022

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