

Research Briefing

20 May 2022

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Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022-2023



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Summary

In the [2022 Queen's Speech](#), the Government committed to bring forward legislation on Northern Ireland legacy issues that would provide “better outcomes for victims, survivors and their families, giving veterans the protections they deserve and focusing on information recovery and reconciliation”.

On 17 May 2022 the Government introduced the [Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#).

The Bill proposes to end legal proceedings concerning Troubles-related conduct and provide conditional immunity from prosecution for those who cooperate with investigations conducted by a newly established Independent Commission for Reconciliation and Information Recovery.

Second reading is scheduled for 24 May 2022.

Background: The Troubles

The part of the United Kingdom known as Northern Ireland was created in 1921 when executive and legislative powers were devolved to a bicameral Parliament of Northern Ireland in May of that year. Northern Ireland and its border with the rest of Ireland was contested from the beginning. This occasionally gave rise to violence, which became more sustained during the period known as [The Troubles](#) (c1968-98), when the border between Northern Ireland and the Republic of Ireland became securitised.

The Belfast Agreement, also known as the Good Friday Agreement (GFA), was reached following multi-party negotiations and signed on 10 April 1998. Principally concerned with British-Irish relations and the restoration of devolved institutions to Northern Ireland, the GFA also made allowance for “the reduction of the numbers and role of the Armed Forces deployed in Northern Ireland to levels compatible with a normal peaceful society”.

In total [more than 3,500 people were killed during the Troubles](#) (PDF).

Achieving a consensus on how to deal with the legacy of the Troubles has proven difficult.

The issue has been dominated by the process for investigating the deaths of people killed during the Troubles, which began in 2006 with the creation of the Police Service for Northern Ireland's (PSNI) Historical Enquiries Team. The

majority of cases remain unsolved and as of May 2022, [the PSNI had a legacy caseload of over 900 cases, involving nearly 1,200 deaths \(PDF\)](#).

What would the Bill do?

The Bill would establish a new Independent Commission for Reconciliation and Information Recovery (ICRIR), which would be responsible for reviewing deaths and other harmful conduct forming part of the Troubles and for publishing its findings.

It would create a conditional immunity scheme, providing immunity from prosecution for Troubles-related offences for individuals that cooperate by providing information to the ICRIR. Future prosecutions would only be possible where immunity was not granted, following a referral from the ICRIR. However, it will not be possible to grant immunity to an individual who has already been convicted, or if a prosecution has already begun against them.

The Bill would also:

- Prevent investigations into Troubles-related conduct, other than those conducted by the ICRIR;
- Prevent prosecutions for Troubles-related offences which do not involve, or are not connected to offences involving, death or serious injury;
- Prevent future civil claims being brought in relation to Troubles-related conduct, and bring to an end those initiated after the Bill's introduction;
- Bring to an end inquests which have not reached an advanced stage, and prevent future inquests into Troubles-related deaths; and
- Initiate a programme of memorialisation of the Troubles.

Reaction

[The Bill has generally been welcomed by veterans' representatives](#), who see it as a step toward providing veterans with the protection from prosecution for which they have campaigned.

Some victims' groups have expressed concern that the conditional immunity scheme would [prevent them seeking justice](#) for relatives killed during the Troubles.

There is some uncertainty as to whether the proposals are capable of being compatible with the European Convention on Human Rights (ECHR). The European Court of Human Rights (ECtHR) has previously found that granting amnesties is incompatible with State obligations to provide mechanisms for the effective investigation of unnatural deaths under Article 2 and mistreatment which may amount to torture under Article 3.

[The Government believes the measures are compatible with the ECHR](#) (PDF).

Relevant documents

The Government has published the following documents relating to the Bill:

- [Explanatory Notes](#) (PDF), including a table of the territorial extent of the Bill's provisions and the measures for which a legislative consent motion will be sought from the devolved administrations
- [ECHR Memorandum](#) (PDF)
- [Delegated Powers Memorandum](#) (PDF)
- [Equality Impact Assessment](#) (PDF)

This paper provides an overview of the Bill's main provisions and the background context. For a detailed description of each clause, please see the Explanatory Notes.

1 Background

1.1 Northern Ireland

The part of the United Kingdom known as Northern Ireland was created in 1921 when executive and legislative powers were devolved to a bicameral Parliament of Northern Ireland in May of that year. A year after the Anglo-Irish Treaty was signed on 6 December 1921, what had been known as “Southern Ireland”¹ seceded from the UK to form a Dominion called the “Irish Free State” (later the Republic of Ireland). Northern Ireland remained an autonomous part of the UK.

Northern Ireland and its border with the rest of Ireland was contested from the beginning. Many in the Nationalist community opposed the “partition” of Ireland in 1921 and desired unification with the rest of Ireland, while many in the Unionist community wanted to maintain links with Westminster and the Crown. This disagreement occasionally gave rise to violence.

Violence became more sustained during the period known as [The Troubles](#) (c1968-98), when the border between Northern Ireland and the Republic of Ireland became securitised. This meant that those crossing by road or rail were subject to police and British Army checks in addition to customs arrangements in place since 1923. The Provisional IRA was active during this period, as were Loyalist paramilitary organisations. Several thousand people were injured or killed.

Another result of the deteriorating security situation was that the Parliament of Northern Ireland was at first prorogued (1972) and then abolished (1973).² Despite periodic attempts to restore devolved institutions between 1973 and 1986, a devolved Northern Ireland Assembly was not established until 1998-99, following the Belfast/Good Friday Agreement.

1.2 “Operation Banner” (August 1969 – July 2007)

Operation Banner was the longest continuous deployment of Armed Forces personnel in British military history.

The deployment was initially a response to the breakdown in public order in the late 1960s which the Royal Ulster Constabulary (RUC) was unable to

¹ Under the Government of Ireland Act 1920

² The [Northern Ireland \(Temporary Provisions\) Act 1972](#) received Royal Assent on 30 March 1972

contain. In 2006 the British Army described Operation Banner as “effectively a large-scale instance of military assistance to the civil power”.³

The focus of operations during the early years of the campaign was on maintaining public order.⁴ However, by the 1980s the objectives of the campaign had largely shifted to counter terrorist operations to address the threat posed by the Provisional IRA. The three key tenets of Army policy at that time were (a) reassurance, (b) deterrence (or what were referred to as ‘Framework’ Operations)⁵ and (c) attrition, which largely focused on the overt arrest and conviction of terrorists.

During the 38-year history of the operation more than 250,000 Regular personnel were deployed, in addition to tens of thousands of members of the Ulster Defence Regiment and its successor the Royal Irish Regiment Home Service Force (HSF).⁶ At the peak of the campaign in the summer of 1972, 28,000 soldiers were deployed across Northern Ireland.

From 2004 the Ministry of Defence began the gradual process of drawing down its presence in Northern Ireland.⁷ Following a statement from the IRA in August 2005 that it was ending its armed campaign, the Government announced a plan to establish a peacetime garrison comprising no more than 5,000 personnel and to be located in no more than 14 bases by August 2007. The Home Service battalions of the Royal Irish Regiment were also disbanded.⁸

1.3

The 1998 Belfast/ Good Friday Agreement

The Belfast Agreement, also known as the Good Friday Agreement (GFA), was reached following multi-party negotiations and signed on 10 April 1998.

³ British Army, Operation Banner: An Analysis of Military Operations in Northern Ireland, Army Code 71842, July 2006

⁴ Largely conducted by the British Army, but with essential support from the Royal Navy, Royal Air Force and other Government Agencies.

⁵ The term ‘framework operations’ was developed in the 1980s to describe the routine activities of the uniformed Army, including vehicle check points (VCP), routine patrolling, searches and manning observation posts.

⁶ The UDR was raised in April 1970 in response to the Hunt Committee report of Autumn 1969, which recommended splitting police and military functions and so disbanding the part-time Ulster Special Constabulary (the B Specials). The UDR was part of the Army, and almost exclusively part-time. Its role was principally that of static security guards, local patrolling and control of vehicle movement. By 1971 it had an establishment of 4,000 personnel and was capable of large-scale operations. In 1976 the decision was taken to raise one full-time company per battalion of the UDR. In 1992 the UDR merged with the Regular Royal Irish Rangers to form the General Service (GS) and Home Service (HS) battalions of the Royal Irish Regiment. The HSF was stood down in 2007.

⁷ HC Deb 17 June 2004, c50-51WS; Ministry of Defence, Delivering Security in a Changing World: Future Capabilities, Cm6269, Session 2003-04

⁸ A structured plan for the phased reduction of troops to peacetime levels was subsequently published in March 2006. A copy of the normalisation plan was placed in the House of Commons Library (ref: DEPO6/697)

Principally concerned with British-Irish relations and the restoration of devolved institutions to Northern Ireland, the GFA also made allowance for “the reduction of the numbers and role of the Armed Forces deployed in Northern Ireland to levels compatible with a normal peaceful society”.

One section covered Republican and Loyalist “Prisoners”, compelling the Irish and UK Governments to:

put in place mechanisms to provide for an accelerated programme for the release of prisoners, including transferred prisoners, convicted of scheduled offences in Northern Ireland or, in the case of those sentenced outside Northern Ireland, similar offences (referred to hereafter as qualifying prisoners). Any such arrangements will protect the rights of individual prisoners under national and international law.⁹

Paramilitary prisoners “affiliated to organisations which have not established or are not maintaining a complete and unequivocal ceasefire” would not benefit from the arrangements, although the intention was to keep that aspect under review.

Furthermore, both Governments were to:

complete a review process within a fixed time frame and set prospective release dates for all qualifying prisoners. The review process would provide for the advance of the release dates of qualifying prisoners while allowing account to be taken of the seriousness of the offences for which the person was convicted and the need to protect the community.¹⁰

Legislation to give effect to these arrangements was enacted by the [Northern Ireland \(Sentences\) Act 1998](#).¹¹

Between 1998 and 2012, the Sentence Review Commission received 636 applications from prisoners, of which 506 applications were granted release.¹²

The GFA did not include a mechanism for dealing with unresolved killings during the Troubles, either by terrorists, the police or the British Army. Nor did it provide an amnesty for crimes which had not yet been prosecuted.

Casualties

In total, around 3,520 individuals lost their lives during the Troubles.¹³

⁹ [Agreement reached in the multi-party negotiations](#), p.30

¹⁰ [Agreement reached in the multi-party negotiations](#), p.30

¹¹ Background is in Library Research Paper 98/65, [Release of Prisoners Under the Northern Ireland \(Sentences\) Bill](#), 15 June 1998

¹² Sentence Review Commissioners, [Northern Ireland](#)

¹³ British Army, Operation Banner: An Analysis of Military Operations in Northern Ireland, Army Code 71842, July 2006

Between August 1969 and July 2007, 1,441 military personnel died as a result of operations in Northern Ireland. 722 of those personnel were killed in paramilitary attacks.

At the height of the campaign in 1972, 170 British soldiers died or were killed – the largest number in one year since the Cyprus Emergency in 1956.¹⁴ Since then that figure has only been surpassed once, during the Falklands conflict in 1982, when 237 military personnel lost their lives.

Three hundred officers of the Royal Ulster Constabulary were also killed in terrorist attacks during the Troubles. A further 4 were killed by the security forces in “friendly fire” incidents.¹⁵

During the same period the British military were responsible for the deaths of 301 individuals, of whom 121 were Republican terrorists, ten were loyalist terrorists and the remainder were civilians.¹⁶

1.4 Previous and ongoing investigations

Achieving a consensus on how to deal with the legacy of the Troubles has proven difficult.

The issue has been dominated by the process for investigating the deaths of people killed during the Troubles,¹⁷ which began in 2006 with the creation of the Police Service for Northern Ireland’s (PSNI) Historical Enquiries Team.¹⁸ The majority of cases remain unsolved and as of May 2022, the PSNI had a legacy caseload of over 900 cases, involving nearly 1,200 deaths.¹⁹ The PSNI has estimated, on the basis of existing resources, that it would take over 20 years to conduct ECHR compliant investigations with respect to its current caseload alone.²⁰

The Historical Enquiries Team

In 2006 the Historical Enquiries Team (HET) was set up in response to judgements at the ECtHR. These judgements, in the so-called McKerr cases,

¹⁴ Ministry of Defence, [UK armed forces operational deaths post World War 2](#), March 2020

¹⁵ [The Royal Ulster Constabulary George Cross](#)

¹⁶ British Army, Operation Banner: An Analysis of Military Operations in Northern Ireland, Army Code 71842, July 2006

¹⁷ British Army, Operation Banner: An Analysis of Military Operations in Northern Ireland, Army Code 71842, July 2006

¹⁸ The HET was subsequently replaced by the Legacy Investigations Branch (LIB) in 2014.

¹⁹ Northern Ireland Troubles (Legacy and Reconciliation) Bill, Explanatory Notes, p.6

²⁰ Northern Ireland Affairs Committee, [Addressing the legacy of Northern Ireland’s Past: The UK Government’s new proposals. Oral evidence](#), 2 September 2020, Q.217. The [Coroners Service for Northern Ireland](#) also has a responsibility for investigating the circumstances surrounding deaths related to The Troubles, where it has been directed to do so. Various cases related to the Troubles are also being investigated as part of [Operation Kenova](#). Both processes are independent of the PSNI and cases can be referred to the Public Prosecution Service for Northern Ireland.

related to the investigation of deaths in which State involvement was alleged. They found various shortcomings which amounted to breaches of Article 2 of the ECHR which protects the right to life.

The role of the HET was to examine all deaths attributable to the security situation that occurred in Northern Ireland between 1968 and the Belfast Agreement in 1998. There were 3,260 deaths attributable to “The Troubles” within this period, arising from 2,555 separate incidents.

From its outset, the HET adopted three main objectives:

1. To assist in bringing a measure of resolution to those families of victims whose deaths are attributable to “the troubles” between 1968 and the signing of The Belfast Agreement in April 1998.
2. To re-examine all deaths attributable to “the troubles” and ensure that all investigative and evidential opportunities are subject to thorough and exhaustive examination in a manner that satisfies the Police Service of Northern Ireland’s obligation of an effective investigation as outlined in Article 2, Code of Ethics for PSNI.
3. To do so in a way that commands the confidence of the wider community.²¹

The HET looked into cases on a chronological basis, with some exceptions:

- Previously opened investigations: prior to the establishment of the HET in 2005, the PSNI’s Serious Crime Review Team (SCRT) had the task of reviewing past cases. The HET subsumed these cases when it took over the responsibility for historical cases and, in the interests of fairness to the families involved, prioritised their reviews;
- Humanitarian considerations: for example, if the relatives of victims were very ill or elderly;
- Involving issues of serious public interest: for example, cases that were being examined, at the time, by the Committee of Ministers;
- Linked series of murders: the HET would pursue the evidential opportunities presented by each case. If cases appear to be linked, then they would be considered together.²²

HMIC inspection of the HET

In 2012, on the request of the Chief Constable of PSNI, the Minister of Justice for Northern Ireland commissioned Her Majesty’s Inspectorate of Constabulary (HMIC) to inspect the role and function of HET.

The inspection focused on whether the HET’s approach to reviewing military cases (a) conformed to current policing standards and policy, (b) adopted a

²¹ HMIC, [Inspection of the Police Service of Northern Ireland Historical Enquiries Team](#), 2013

²² HMIC, [Inspection of the Police Service of Northern Ireland Historical Enquiries Team](#), 2013, p.109

consistent approach to military and paramilitary cases and (c) met the requirements that would ensure it was compliant with Article 2 of the ECHR.

The [subsequent report of the HMIC](#) was highly critical of the HET and in 2013 the PSNI announced that it would review **all** military cases relating to the period from 1968 up until the Good Friday Agreement was signed, in order “to ensure the quality of the review reached the required standard”.²³

The work of the Legacy Investigations Branch

As a result of restructuring and budget cuts to the Police Service of Northern Ireland, the HET was disbanded in September 2014. In its place the PSNI stated that a much smaller Legacy Investigations Branch (LIB) would be formed. At the time the PSNI acknowledged that “What is clear is that we cannot afford to do all that we currently do and some of what we do will take longer to achieve”.

The LIB continues to review all murder cases linked to the Troubles. It examines cases on a [case sequencing model](#), which looks at forensic opportunities, available witnesses and other investigative material when deciding which cases to tackle first. The PSNI has stated that it does not prioritise military cases.²⁴

The LIB inherited over 900 cases from the HET, involving nearly 1,200 deaths. PSNI figures provided to the Defence Committee in 2017 showed that investigations into killings by the British Army accounted for about 30% of its outstanding legacy workload. Of the total 923 deaths in its remaining caseload at the time, 379 were attributed to republicans, 230 to loyalists and 283 to the security forces (military and Royal Ulster Constabulary). A further 31 were unknown.²⁵

Any decision by the LIB to prosecute is referred to the Director of Public Prosecutions for Northern Ireland. The process is independent of the MOD and the British Government.

There has been significant criticism, on all sides, of the process by which legacy investigations have been, and continue to be, undertaken. Concerns have been expressed over the credibility and reliability of evidence and witness statements that may be over 40 years old and of the re-opening of investigations that had already concluded.

Notable is the widespread perception that investigations have disproportionately focused on the actions of the armed forces and former police officers, rather than Republican and Loyalist paramilitary forces.

²³ PSNI statement on [Legacy Investigations](#), 8 December 2016

²⁴ PSNI statement on [Legacy Investigations](#), 8 December 2016

²⁵ Police Service of Northern Ireland Legacy investigation Branch, [Submission to the Defence Select Committee, JF0003](#), 2017

In a 2017 report the Defence Select Committee observed that of the outstanding caseload of the LIB “investigations into former army personnel account for a minority of LIB cases”, yet “they still amount to a disproportionately high number of investigations (30% of investigations) when compared to the total level of killings attributed to the Army (10%)”.²⁶

In June 2021 a [case was brought before the Supreme Court](#) questioning the independence of the Legacy Investigations Branch and its ability to review or conduct investigations into legacy deaths. A [judgment](#) in December 2021 dismissed the case.

Prosecution of veterans

Over the last few years, this perception of unfairness has been emphasised by decisions of the Director of Public Prosecutions for Northern Ireland to bring prosecutions against several former Army personnel, including in relation to Bloody Sunday.

Any decision to prosecute is taken by the Director of Public Prosecutions for Northern Ireland. The process is independent of the Ministry of the Defence and the Government.

Thus far, cases have been brought against six former military personnel for offences committed during the Troubles, in five separate incidents. However, several of those cases have subsequently collapsed or been halted on the grounds of inadmissibility of evidence. The case against Denis Hutchings, a former member of the Life Guards Regiment charged with the attempted murder of John-Pat Cunningham in 1974, was also halted following the death of the defendant in October 2021.²⁷

One case is currently before the courts and in March 2022 the High Court in Belfast quashed the decision of the Public Prosecution Service (PPS) to discontinue proceedings against Solider F in relation to Bloody Sunday. The PPS is now reconsidering that case.

All these issues are examined in greater detail in House of Commons Library, [Investigation of former Armed Forces personnel who served in Northern Ireland](#), 18 May 2022.

Operation Kenova

[In 2016](#) at the request of the PSNI, [Operation Kenova](#) was established to investigate the alleged criminal activities of a former British Army agent, codenamed “Stakeknife”, during the Troubles. Part of the investigation is examining potential evidence of criminal offences having been committed by

²⁶ Defence Select Committee, Investigations into fatalities in Northern Ireland involving British military personnel, HC 1064, Session 2016-17, para. 15

²⁷ See Public Prosecution Service for Northern Ireland, [PPS Statement on the death of Denis Hutchings](#), 19 October 2021

members of any paramilitary organisation, the British Army, the British Security Services or other Government personnel in the handling of that agent.

Operation Kenova is independent from the legacy work of the LIB. Its aim is:

To provide an effective, efficient and independent investigation that seeks to meet the standards imposed by Article 2 European Convention Human Rights (ECHR). The investigations apply transparency wherever possible with a focus upon and due consideration towards the victims and families of the offences being investigated. The investigations apply an equal and fair approach towards all those we engage with, treating everyone with courtesy and respect.²⁸

In 2019 and 2020 the investigations managed by the Operation Kenova team were expanded, to include:

- An investigation into the 1972 killing of Jean Smyth-Campbell (Operation Mizzenmast).
- An investigation into the killings of RUC officers Sean Quinn, Allan McCloy and Paul Hamilton in 1982 (Operation Turma).
- A review of the Glenanne gang series of murders committed during the 1970s, which is estimated to involve 120 murders (The Barnard Review).

In total, 236 murders are being examined by the Operation Kenova team.

In August 2021 the Operation Kenova team said that it had provided the Director of Public Prosecutions for Northern Ireland with 31 files consisting of more than 50,000 pages of evidence relating to 17 murder victims and 12 abductions, and that more would follow by the end of the year.²⁹ To date, however, its work has not led to any prosecutions. In a statement, the head of Operation Kenova, Jon Butcher, said:

Some people have commented that Kenova has not yet resulted in prosecutions. The number of files presented to the DPP NI demonstrates what can be achieved evidentially. We must be patient and await his decisions. It is important that everyone recognises that prosecutions will be rare. The most recent timescale for prosecution decisions advised by the DPP NI regarding the Kenova files is the spring of 2022.³⁰

With its emphasis on independence, transparency and placing victims and families at the centre of its work, Operation Kenova has been highlighted as a role model for legacy investigations.

²⁸ Northern Ireland Affairs Committee, Addressing the legacy of Northern Ireland's past: the Government's new proposals, HC329, October 2020, [Written Evidence from Jon Butcher, Officer in Overall Command Operation Kenova](#)

²⁹ [Operation Kenova Press Release](#), 21 August 2021

³⁰ [Operation Kenova Press Release](#), 21 August 2021

Prosecution of paramilitary personnel

In response to accusations that military personnel have been unfairly targeted by the PSNI in its legacy investigations, the PPS for Northern Ireland has sought to make clear that cases with respect to alleged offences involving republican and loyalist paramilitaries also remain active.

In a [press release](#) in April 2019 the PPS set out its prosecution decisions relating to paramilitary personnel since 2011:

- Between 2011 and April 2019 the PPS took prosecutorial decisions in 26 legacy cases. A case can involve more than one individual.
- 13 of those cases related to alleged offences involving republican paramilitaries:
 - There have been prosecutions in eight of those cases.
 - As of April 2019, prosecution proceedings were still active in three of those cases.
 - Of the five cases that had concluded, two resulted in convictions, two cases were discontinued,³¹ and one resulted in acquittal.
- Eight of the 26 cases related to alleged offences involving loyalist paramilitaries:
 - The decision to prosecute was taken in four of those eight cases.
 - Two cases resulted in a conviction.
 - As of April 2019, two prosecution cases remained active.
- Five cases involved former military personnel (see above).

Administrative scheme for “on the runs”

Between 2000 and 2014, the Government operated an administrative scheme to deal with the issue of those suspected of terrorist crimes in Northern Ireland, but not in custody. As outlined above, the release of prisoners had been a crucial part of the Northern Ireland peace process. Negotiations between Sinn Féin and the UK Government established an administrative scheme for those suspected of terrorism crimes before the Agreement but who could not benefit from the 1998 Act because they were “on the run”.

Under the scheme, Sinn Féin, the Irish Government and the Prison Service of Northern Ireland submitted individuals’ names to the UK Government. The Police Service Northern Ireland reviewed their cases, and the Director of Public Prosecutions for Northern Ireland and the Attorney General decided whether prosecution was justified. Where they decided that this was not

³¹ One following the death of the defendant.

justified, the UK Government issued letters of assurance (often referred to as letters of comfort) to those individuals via Sinn Féin.³² An attempt to put the scheme on a statutory footing failed when the Northern Ireland (Offences) Bill 2005-06 was withdrawn.³³

Whilst the scheme was not secret, it was not widely publicised. However, the case of [R v John Anthony Downey](#), which was heard in the Central Criminal Court in February 2014, resulted in much information on the scheme becoming public. John Downey had been told in 2007 that he was not of interest to any police force in the UK when in fact he was wanted by the Metropolitan Police Service on suspicion of involvement in the Hyde Park bombing of 1982. This led to the collapse of his trial, and to the Government asking Lady Justice Hallett to conduct an independent review of the scheme. Her report was published in July 2014.³⁴

The Hallett Review Report made it very clear that the letters given to “on the runs” did not constitute an amnesty or immunity from prosecution: The Report criticised the scheme and its operation:

2.1 There has been a great deal of misunderstanding and misreporting of the administrative scheme, and confusion about the categories of ‘on the runs’ (OTRs).

(...)

2.3 The administrative scheme did not amount to an amnesty for terrorists. Suspected terrorists were not handed a ‘get out of jail free card’.

2.4 The administrative scheme was treated by the UK Government as sensitive and details were not widely publicised. However, the scheme was not classified as ‘secret’.

2.5 The scheme was allowed to evolve and operate without any proper structure or policy in place. This led to considerable scope for error.

2.6 Failings were for the most part systemic rather than attributable to individuals. Opportunities were missed between and within departments and organisations which could have minimised the risk of errors.³⁵

In May 2019, former Minister of State for Northern Ireland, John Penrose reiterated that “letters of comfort” issued under the OTR scheme do not provide immunity from prosecution. In a debate on 16 May 2019 he stated:

³² [The Report of the Hallett Review: An independent Review into the On the Runs Administrative Scheme](#), HC 380, 2014-1, paragraph 2.21

³³ See Library Research Paper 05/78 [Northern Ireland \(Offences\) Bill \(Bill 81 of 2005-06\)](#), 17 November 2005 and the oral statement by the then Northern Ireland Secretary, Peter Hain, [HC Deb 11 January 2006 c289](#)

³⁴ [The Report of the Hallett Review: An independent Review into the On the Runs Administrative Scheme](#), HC 380, 2014-15

³⁵ [The Report of the Hallett Review: An independent Review into the On the Runs Administrative Scheme](#), HC 380, 2014-15, executive summary, page 7

My right hon. Friend also made a point about the letters of comfort that were issued by a previous Government. I reassure him and other Members that legal reports have been issued on those letters since the cases that he mentioned saying that they are not an amnesty from prosecution. If a case can be made, letters of comfort will not in future be body armour against prosecution. He is right to say that we will have to wait and see how that plays out when or if one of the cases comes to court, but that is the latest and strongest legal situation [...]

I hope the message will go out loud and clear from the Chamber that anyone who thinks they can swan around scot-free as a result of that does not have the legal protection that some people may have thought they did.³⁶

Inquests

The [Coroners Service for Northern Ireland](#) also has a responsibility for investigating the circumstances surrounding deaths related to The Troubles, where it has been directed to do so.³⁷ This is a separate process from the work of the LIB.

Purpose of an inquest

The purpose of a coroner's inquest is to find out who the deceased person was and, how, when and where they died, and to establish the details the Registrar of Deaths needs to register the death.³⁸ A coroner's inquest is a fact-finding exercise, not a trial. The coroner is not able to decide, or appear to decide, any question of criminal or civil liability or to apportion guilt or attribute blame.

Legacy inquests

Although there is no formal or legislative definition of a legacy inquest case, there is an accepted definition which is used for administrative purposes – a legacy case is generally one which involves or is related to deaths arising out of the “Troubles”.³⁹

The Northern Ireland Office's 2018 consultation, [Addressing the legacy of Northern Ireland's Past](#), included the following information about inquests into deaths that occurred during the Troubles:

The majority of deaths that occurred during the Troubles will have had a Coroner's inquest soon after the death occurred. Where there were shortcomings in the original inquest, the [Attorney General for Northern Ireland] can order a fresh inquest. There are currently over 50 legacy inquests,

³⁶ HC Deb 16 May 2019, c371 and c382

³⁷ Northern Ireland has its own legislation dealing with coroners and inquests, mainly the [Coroners Act \(Northern Ireland\) 1959](#) and the [Coroners \(Practice and Procedure\) Rules \(Northern Ireland\) 1963](#).

³⁸ The outcome of an inquest in Northern Ireland comes in the form of “findings” which record the essential facts relating to a death.

³⁹ Department of Justice, [DOJ announces legacy inquest reform](#), 28 February 2019 [accessed 11 March 2020]

relating to almost 100 deaths, proceeding through the Northern Ireland Coroners' courts on this basis.⁴⁰

The Northern Ireland Legacy Inquest Team

Several legacy inquests are currently underway.

In 2019 a dedicated unit was established by the Coroners Service for Northern Ireland to deal with outstanding legacy cases. At the time the team was established, there were 52 outstanding legacy inquests, which the Presiding Coroner has committed to dealing with over the next five years.

In November 2019 the Presiding Coroner issued a [statement](#) setting out the sequence in which those legacy inquests would be heard. Six of those inquests, involving 19 individuals, relate to military operations.

The Covid-19 pandemic impacted significantly on the schedule of legacy inquests after the Lord Chief Justice of Northern Ireland announced that all non-urgent court business, including legacy inquests, would be adjourned, and kept under review.

While some preliminary hearings and administrative reviews were able to take place, in a [statement issued in June 2020](#) the Presiding Coroner said:

It remains the case that the full impact of the Covid-19 pandemic on legacy inquests is not yet known. What is clear at this stage is that the three inquests that were listed in what was to be quarter 1 of Year 1 of the Lord Chief Justice's Five Year Plan cannot proceed due to Covid-19. It is also apparent that preparations for all Year 1 inquests have been interrupted by the impact of Covid-19 on Legacy Inquest Unit staff and disclosure providers as well as on elderly witnesses and those who provide support to them during the inquest process. Accordingly, and unavoidably, the hearing of Year 1 inquests has been pushed back with a consequent impact on the start date of the Five Year Plan [...]

I have reviewed the feasibility of sequencing a second tranche of inquests and having done so, I am of the view that we do not yet know enough about the impact of Covid-19 on the planned Year 1 inquests to announce the second tranche. This matter will be kept under review.

In June 2021 the then Presiding Coroner, Mr Justice McFarland, issued a [statement updating the five-year plan](#) and outlined which inquests could now move forward. A statement in March 2022 identified nine cases that will be progressed this year.⁴¹

Ballymurphy inquest

One of the more high-profile inquests is the [inquest into the death of 10 civilians at Ballymurphy in August 1971](#) at the start of Operation Demetrius.

⁴⁰ Northern Ireland Consultation Paper, [Addressing the legacy of Northern Ireland's past](#), May 2018, p15

⁴¹ Northern Ireland Judiciary, Legacy Inquest Review, 22 March 2022

The operation involved the arrest and internment, without trial, of individuals suspected of being involved in the IRA.

Original inquests were held into each of the deaths in 1972 resulting in open verdicts in all cases.

Following a campaign by the families of the victims for the cases to be reviewed, in 2011 the Attorney General directed that new inquests should be held into the deaths of all ten people.

The inquest opened in November 2018 and concluded taking evidence in March 2020. The presiding coroner, Mrs Justice Keegan, delivered her [verdict](#) in May 2021.

The coroner found that all ten victims were innocent and that nine of the ten victims were shot by the British Army. In all cases the coroner found that the Yellow Card (the applicable Rules of Engagement) had not been adhered to and there had been no adequate investigation by the Royal Military Police. The coroner could not say definitively who shot the tenth victim, John McKerr.

In a Statement to the House, the Northern Ireland Secretary, Brandon Lewis acknowledged the findings of the coroner and went on to state:

The Government profoundly regret and are truly sorry for these events, for how investigations after these terrible events were handled, and for the additional pain that the families have had to endure in their fight to clear the names of their loved ones since they began their campaign almost five decades ago.⁴²

The findings of the Ballymurphy Inquest have reportedly been sent to the Public Prosecution Service for Northern Ireland.⁴³

1.5

Policy development: previous proposals

Since 2014 there have been several attempts by the Government to address legacy issues in Northern Ireland.

Stormont House Agreement

Addressing legacy issues was a key part of the [Stormont House Agreement](#) reached in December 2014. Participants in the negotiations on that agreement stated that any approach to the past should respect the following overarching principles:

- promoting reconciliation;
- upholding the rule of law;
- acknowledging and addressing the suffering of victims and survivors;

⁴² HC Deb 13 May 2021, c277

⁴³ Belfast Telegraph, "[Ballymurphy inquest findings sent to PPS](#)", 17 January 2022

- facilitating the pursuit of justice and information recovery;
- be human rights compliant; and
- be balanced, proportionate, transparent, fair and equitable.⁴⁴

To this end, the agreement set out various detailed measures. Among them was the establishment of a new independent Historical Investigations Unit (HIU)⁴⁵ to take forward outstanding investigations into deaths during the Troubles.

2018 public consultation – Addressing the Legacy of Northern Ireland’s Past

On 11 May 2018 the Northern Ireland Office launched a public consultation: [Addressing the legacy of Northern Ireland’s Past](#). The consultation took forward the proposals set out in the Stormont House Agreement in relation to the Historical Investigations Unit (see above).

In July 2019 the Government published an [analysis of the consultation responses](#) that it had received.

New decade, new approach

On 9 January 2020 the [Northern Ireland Office](#) published the text of a [deal to restore devolved government in Northern Ireland](#). At that point, there had been neither a fully functioning Assembly nor Executive in Northern Ireland for more than three years. On Saturday 11 January 2020 the Assembly met at Stormont and an Executive was formed.⁴⁶

Annex A to the [New Decade, New Approach](#) agreement set out specific Government commitments to Northern Ireland. It stated that:

As part of the Government’s wider legislative agenda, the Government will, within 100 days, publish and introduce legislation in the UK Parliament to implement the Stormont House Agreement, to address Northern Ireland legacy issues. The Government will now start an intensive process with the Northern Ireland parties, and the Irish Government as appropriate, to maintain a broad-based consensus on these issues, recognising that any such UK Parliament legislation should have the consent of the [Northern Ireland] Assembly.⁴⁷

The UK Government also committed to “provide funding to support the implementation of the Stormont House Agreement proposals on legacy”. The agreement did not, however, include a specific date by which legislation was to be introduced.

⁴⁴ [Stormont House Agreement](#), para 21

⁴⁵ Examined in paragraphs 30-40 of the [Stormont House Agreement](#)

⁴⁶ See BBC News online, “[Stormont deal: Arlene Foster and Michelle O’Neill new top NI ministers](#)”, 12 January 2020.

⁴⁷ Northern Ireland Office, [New Decade, New Approach](#), January 2020, p48.

Revision to the proposals

Upon re-election in December 2019, Boris Johnson's Conservative party promised to introduce legislation "to tackle vexatious legal claims that undermine our Armed Forces". On 18 March 2020 the Government published the [Overseas Operations \(Service Personnel and Veterans\) Bill](#). Despite suggestions that it may include Northern Ireland within its provisions, legacy prosecutions in relation to the Troubles were excluded.

In a [Written Ministerial Statement](#) published alongside the Bill, the Secretary of State for Northern Ireland said that the Government wanted to ensure "equal treatment of Northern Ireland veterans and those who served overseas".⁴⁸ On the issue of legacy more broadly, he said:

the Government's view that to best meet the needs of all victims and of wider society, we need to shift the focus of our approach to the past. While there must always be a route to justice, experience suggests that the likelihood of justice in most cases may now be small and continues to decrease as time passes. Our view is that we should now therefore centre our attention on providing as much information as possible to families about what happened to their loved ones – while this is still possible.

Mr Lewis said it was proposed that these measures would be carried out by one independent body, overseeing and managing "both the information recovery and investigative aspects of the legacy system, and provide every family with a report with information concerning the death of their loved one". He said it was "vital" to "swiftly implement an effective information recovery mechanism before this information is lost forever".⁴⁹

Only cases in which there is "a realistic prospect of a prosecution as a result of new compelling evidence would proceed to a full police investigation and if necessary, prosecution", Mr Lewis said. Cases which did not reach this threshold, "or subsequently are not referred for prosecution, would be closed and no further investigations or prosecutions would be possible – though family reports would still be provided to the victims' loved ones".⁵⁰

The decision to separate legal protections for Northern Ireland veterans from the [Overseas Operations \(Service Personnel and Veterans\) Bill](#), was met with dismay from a number of campaign groups. Others called the Government's proposal to close the majority of unsolved cases relating to The Troubles, a "betrayal" of the Stormont House agreement.⁵¹

⁴⁸ HCWS168, [Addressing Northern Ireland Legacy Issues](#), 18 March 2020

⁴⁹ Northern Ireland Office, [Addressing Northern Ireland Legacy Issues: Written statement – HCWS168](#), 18 March 2020.

⁵⁰ Northern Ireland Office, [Addressing Northern Ireland Legacy Issues: Written statement – HCWS168](#), 18 March 2020.

⁵¹ The Guardian, ["Dismay over UK plan to close unsolved Troubles cases"](#), 18 March 2020

2021 Command Paper – a new way forward?

In July 2021 Brandon Lewis presented a [Command Paper](#) to Parliament which set out the Government’s latest proposals with respect to legacy issues.⁵² Specifically:

- **Information recovery body** – a new independent body will be established that focuses on the recovery and provision of information about Troubles-related deaths and injuries, including “where there remain unanswered questions about allegations of wrongdoings by representatives of the State”.⁵³ Any investigation would be “for the purpose of genuine and robust information recovery, rather than to create a file for prosecution”. The body has been likened to the [Truth and Reconciliation Commission](#) that was established in South Africa in 1995.
- **Statute of limitations** – will be introduced to apply equally to all parties in all Troubles-related incidents. Under the proposal “the PSNI and Police Ombudsman Northern Ireland would be statutorily barred from investigating Troubles-related incidents. This would bring an immediate end to criminal investigations into Troubles-related offences and remove the prospect of prosecutions”. A statute of limitation would not be applied retrospectively, therefore current prosecution cases before the courts, would continue. No pardons would be granted.
- **Oral history and Memorialisation** – the Stormont House Agreement included a proposal for an Oral History Archive and consistent with that agreement “the Government is committed to ensuring that further reconciliation measures form a core part of addressing the legacy of the Troubles”. A major oral history initiative will therefore be established, via new physical and online resources and through empowerment of the museums sector in Northern Ireland, to further mutual understanding and reconciliation in both the short and long term.
- **Civil cases and inquests** – all judicial activity in relation to Troubles-related incidents, including current and future civil cases and inquests will end.

These proposals moved away from the HIU that was agreed in the 2014 Stormont House Agreement and the subsequent approach to investigations announced in March 2020.

In presenting these new proposals, the Government stated, however:

The UK Government acknowledges that any proposal that moves away from criminal justice outcomes would be a very significant step that would be extremely difficult for some families to accept. However, the UK Government is increasingly of the view, after long and careful reflection, that any process that

⁵² HM Government, Addressing the legacy of Northern Ireland’s past, CP498, July 2021, foreword

⁵³ HM Government, Addressing the legacy of Northern Ireland’s past, CP498, July 2021, para 11

focuses on the lengthy pursuit of retributive justice will severely hold back the successful delivery of a way forward focused on information recovery, mediation and reconciliation that could provide a sense of restorative justice for many more families than is currently achieved through the criminal justice system.⁵⁴

The Government subsequently committed to a process of talks with the political parties in Northern Ireland, the Irish Government and representatives across Northern Ireland society, including families and victims' groups.

Reaction

The proposals were immediately met with criticism and anger from Northern Ireland's political parties, the families of victims of the Troubles on all sides, and campaign and human rights groups. Questions were also raised over the compatibility of the proposals with the ECHR.

On 20 July 2021 the [Northern Ireland Assembly was recalled](#) to discuss the Government's proposals. A non-binding motion denouncing the plans to introduce a statute of limitations was passed, without any dissenting voices.⁵⁵

⁵⁴ HM Government, Addressing the legacy of Northern Ireland's past, CP498, July 2021, foreword

⁵⁵ ["Stormont politicians reject UK Government plans for Troubles amnesty"](#), The Journal, 20 July 2021

2

The Bill: Key definitions

Clause 1 sets out certain key definitions used throughout the Bill:

- **“The Troubles”** is defined as the events and conduct that related to Northern Ireland affairs between 1 January 1966 and 10 April 1998. An event or conduct “forming part of the Troubles” is any event or conduct which falls within this, including any connected with preventing, investigating or dealing with the consequences of any other event or conduct relating to Northern Ireland affairs.
- **“Northern Ireland affairs”** is defined as the constitutional status of Northern Ireland or political or sectarian hostility between people in Northern Ireland.
- **“Other harmful conduct forming part of the Troubles”** is defined as any conduct forming part of the Troubles which caused a person to suffer physical or mental harm of any kind (excluding death).
- A **“Troubles-related offence”** is defined as one which is an offence under the law of Northern Ireland, England and Wales, or Scotland, and the relevant conduct was to any extent conduct forming part of the Troubles.
 - A **“serious Troubles-related offence”** is defined as murder; manslaughter; another offence committed by causing the death of a person; or, an offence committed by causing a person to suffer serious physical or mental harm;
 - A **“connected Troubles-related offence”** is defined as an offence which relates to, or is otherwise connected with, a serious Troubles-related offence, but is not one itself.

3 Part 2: The Independent Commission for Reconciliation and Information Recovery

3.1 The ICIR, the Commissioners and ICIR officers

Clauses 2 to 6 and **Schedules 1 and 2** of the Bill create, and set up the working conditions for, the public body to be known as the Independent Commission for Reconciliation and Information Recovery (ICIR).

What will the ICIR be?

The ICIR is a proposed new independent body that would investigate deaths and instances of serious injury resulting from conduct forming part of the Troubles in Northern Ireland.

Statutory functions

The organisation would have six statutory functions, set out in subsection 2(4):

- to review deaths arising from the Troubles;
- to review instances of serious injury arising from the Troubles;
- to produce reports on the findings of those reviews;
- to decide whether individuals should be granted immunity from prosecution in relation to the relevant incidents;
- to refer relevant deaths to prosecutors; and
- to produce an historical record of Troubles deaths.

The ICIR would be expected to report annually on its work, and to provide the Secretary of State for Northern Ireland with a copy of each report. Subsection 2(5) of the Bill sets out in further detail what information this annual report must include.

The Bill requires the Secretary of State for Northern Ireland to provide financial resources to the ICIR for it to discharge its functions.

Corporate structure and personnel

The Bill proposes that the ICIR will enjoy a very similar status in law as other statutory public bodies which are independent of government. For example, the Electoral Commission is similarly both a body corporate and is not a servant or agent of the Crown, nor does it enjoy any status, immunity or privilege of the Crown.

Part 1 of Schedule 1 makes related arrangements regarding the corporate personality of the ICIR. For example, it can carry out ancillary functions, such as entering into contracts and paying officers, but it cannot borrow any money. Rules are also set out regarding authentication of official documents.

Except as otherwise constrained by the Act, the ICIR may also regulate its own proceedings.

The Commissioners

The ICIR will consist of between 3 and 5 commissioners, including:

- the Chief Commissioner;
- the Commissioner for Investigations; and
- between one and three other commissioners.

The Secretary of State for Northern Ireland is responsible for the appointment of all commissioners, as well as deciding how many ordinary commissioners there should be at any given time, within the statutory limits.

The Chief Commissioner

The position of Chief Commissioner attracts special statutory responsibilities. The holder would ultimately be responsible for the drafting and publication of reports arising out of investigations carried out by the ICIR. They are also responsible for determining the procedures to be used in relation to requests for immunity, and must chair the immunity request panels.

To be appointed as the Chief Commissioner of the ICIR someone would have to hold, or have held high judicial office. If a current holder of high judicial office is contemplated for the role, the Secretary of State would have to consult the head of the relevant branch of the senior judiciary before making the appointment.⁵⁶

The Chief Commissioner would be able to delegate most of their functions to other commissioners and/or to employed or seconded ICIR officers. The only non-delegable functions are those relating to their membership and chairing of the immunity requests panel.

⁵⁶ This is standard practice for any public appointments which would involve current members of the senior judiciary.

The Commissioner for Investigations

“Operational control” over investigations by the ICIR would rest with the Commissioner for Investigations, as stipulated by clause 13. The Commission for Investigations is designated as having the powers and privileges of a constable (under clause 6), and can themselves designate other commissioners and ICIR officers as having those same powers.

The purpose of this is, essentially, to give those commissioners and officers the ability to investigate relevant Troubles-related incidents in much the same way that police officers could at the moment. Schedule 2 sets out in greater detail the extent and limits of those powers, and how they apply in the three territorial jurisdictions of the UK. For example, it creates offences of impersonating a designated ICIR officer, analogous to the existing offence of impersonating a police officer.

Disqualifying offices

An individual would not be eligible for appointment as, or be allowed to continue to serve as, a commissioner, if they are or become:

- an MP, MLA, MSP or MEP;
- a member of either House of the Irish legislature;
- a holder of elected office in local authorities in any part of the UK; or
- a member of a city, county or city and county council in Ireland.

As introduced, the Bill would not prevent Senedd Cymru members from serving as a commissioner. The explanatory materials accompanying the bill do not explain this discrepancy.

Tenure of office

Once appointed, commissioners hold office until they resign. The Secretary of State can effectively dismiss them, by “calling on them to resign”, however, if:

- they are given a custodial sentence on conviction of a crime
- they become insolvent; or
- they become disqualified from being a company director.

Employed and seconded officers

The work of the commissioners will be supported by ICIR officers, who can be employed or seconded from elsewhere. Among their number, there must be those who both **have**, and who do not **have**, prior experience of conducting criminal investigations in Northern Ireland.

Statutory duties

The ICIR would have three “negative” statutory duties under clause 4. It must not do anything that would:

- prejudice, or risk prejudicing, the UK’s national security;
- put, or risk putting, anyone’s life or safety at risk; or
- have, or risk having, a prejudicial impact on actual or prospective criminal proceedings.

Disclosure powers

The ICIR would be given powers, under clause 5, to require the disclosure of information, documents and other material by “relevant authorities”. This information would be sought “for the purposes of, or in connection with” either:

- the review of deaths or serious injuries arising from the Troubles; or
- deciding whether to grant immunity to an individual for serious Troubles-related offences.

Relevant authorities can also provide this information on their own initiative. The Bill specifically provides that no disclosure under these arrangements would constitute:

- a breach of confidence; or
- a breach of any other restriction on disclosure

that the relevant authority might otherwise have been legally bound by.

The Commissioner for Investigations can either agree protocols for information sharing with a relevant authority, or impose requirements on it.

Who is a “relevant authority”?

For the purposes of the Bill, a “relevant authority” includes:

- the Chief Constable of the PSNI
- the chief officer of any police force 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
- any Minister of the Crown

- the Security Service
- the Secret Intelligence Service
- GCHQ
- any other UK Government department (whether or not ministerial)
- any Northern Ireland department
- the Scottish Ministers
- any branch of the armed forces

3.2

Admissibility of information provided to the ICIR

Clauses 7 and 8 would limit the use of information provided to the ICIR in civil and criminal proceedings.

It would not be possible to use evidence against a person in criminal proceedings that was provided by that person to the ICIR, or obtained by the ICIR.

This prohibition would be absolute in relation to information provided by or obtained from a person who has made an application for immunity, or information obtained under an information notice as provided for by clause 14 (see below for further detail).

Any other material provided by or obtained from a person may not be used in evidence against them subject to two exceptions:

- Where the material was provided to an ICIR officer designated as having the powers of a constable under clause 6. The Explanatory Notes give the example of information provided by a suspect in response to questions put as part of a formal interview under caution;⁵⁷
- Where the criminal proceedings relate to the ICIR's exercise of its functions, other conduct by the ICIR, or the conduct of current or former staff. The Explanatory Notes provide the example of the prosecution of a person who was found to have deliberately made false statements on their application for employment with the ICIR, which the exception would enable.⁵⁸

⁵⁷ Para 42

⁵⁸ Para 43

“Protected material”, being material provided to or obtained by the ICIR in the exercise of its functions, would also be inadmissible in the following proceedings:

- Any civil proceedings;
- Proceedings before a coroner;
- An inquiry under the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016

This is subject to an exception for proceedings relating to the operation of the ICIR and its officers, or any judicial review or equivalent proceeding relating to the conduct or exercise of functions of a person other than the ICIR.

3.3 Reviews of deaths and other harmful conduct

Clauses 9-17 would govern the conduct of reviews of Troubles related deaths and other harmful conduct by the ICIR.

Who would be able to request a review?

A close family member would be able to request a review of a death that was directly caused by conduct forming part of the Troubles. Where there is no close family member, any other family member could exercise the right where appropriate, as determined by the Commissioner for Investigations.

“Close family member” is defined by **Schedule 3** as a: spouse, civil partner or co-habitee; child; sibling; parent; step-child or parent; half-sibling or step-sibling of the deceased person.

The Secretary of State would be able to request a review of a death caused by conduct related to the Troubles. The Attorney General and the Advocate General for Northern Ireland would also be able to request a review, but only where the death was caused directly by conduct related to the Troubles.⁵⁹

A number of other officials would also be able to request a review into a directly caused death, including coroners in England, Wales and Northern Ireland, and a sheriff, the procurator fiscal, and the Lord Advocate in Scotland.

The request would need to be made within five years of the ICIR becoming operational.

⁵⁹ A death was caused directly by conduct forming part of the Troubles if it was wholly caused by physical injuries and/ or illness resulting directly from violence or force which was conduct forming part of the Troubles.

A request to review other harmful conduct may be made by a person who suffered serious physical or mental harm as a result, or by the Secretary of State. Such a request would also need to be made within five years of the ICRR being operational.

Those making requests will be able to specify particular questions about the death or harmful conduct.

Conduct of reviews

The Bill proposes that the Commissioner for Investigations would be empowered to decide how requests should be made, whether they are valid and how subsequent requests should be dealt with.

The Commissioner for Investigations would also have operational control over the conduct of reviews, and would be required to ensure that:

- The review looks into all the circumstances of the death or other harmful conduct, including any Troubles-related offences;
- Account is taken of any investigation that has previously taken place, and unnecessary duplication is avoided.

The Commissioner would have the power to require people by notice to supply information, documents or other potential evidence within their control for the purpose of or in connection with a review.

A relevant authority would be able to argue that compliance with a notice by a particular person would prejudice national security, and to nominate an alternative. The Commissioner would then be able to determine whether to vary, revoke or leave the notice unchanged.

Clause 14 would also give effect to **Schedule 4**, which would provide for the enforcement of information notices through the issuing of fines by the ICRR, up to a maximum of £1000.

Reporting on findings

The Bill proposes that the Chief Commissioner would be required to produce a final report on the findings of any review into a death or harmful conduct forming part of the Troubles.

The following people would have the opportunity to see a draft and to make representations before the report was finalised:

- The person who requested the review;

- For a review into a death: the family members of anyone who was the subject of the review; the family of anyone else killed in the relevant event;⁶⁰ or anyone who suffered serious physical or mental harm.
- For a review relating to other harmful conduct: the family members of anyone killed in the relevant event;
- Any individual about whom the report contains critical material.⁶¹

The Chief Commissioner would be able to exclude material from the final report on public interest grounds, taking account of these representations.

Where the review was carried out following a request, the Chief Commissioner would be required to provide the final report to the person who made the request and to publish it.

Where the review was connected to a request for immunity (see the following section for further detail) the Commissioner would be able to publish it, having identified and taken account of the views of the family members of anyone killed in the relevant event or anyone who suffered serious physical or mental harm.

Publication of the final report would also be dependent on the exhaustion of any proceedings following a decision to prosecute (see section 3.5 below for further information), or a final decision not to prosecute, and other requirements around national security and the publication of sensitive information being satisfied.⁶²

Paragraph 8 of **Schedule 5** provides details of information that must be included in a report where the Secretary of State has decided to prohibit a proposed disclosure, including a statement setting out the reasons.

3.4 Immunity from prosecution

Clauses 18-21 set out the process for the ICRIIR to grant immunity from prosecution for Troubles-related offences. The decision would be taken by the immunity requests panel (clause 21).

⁶⁰ “Relevant event” is defined as “the event in which that death, or other harmful conduct, occurred”: cl 15(12)

⁶¹ “Material criticising an individual” means material that the Chief Commissioner views as constituting “significant criticism of a living individual who was involved in the conduct forming part of the Troubles, or other harmful conduct forming part of the Troubles, to which a review relates”: cl 15(12)

⁶² As required under clause 4(1) and 25(2)

What conditions must be met for the ICIR to grant immunity?

Under the Bill's proposals, if the following three conditions are met the ICIR must grant immunity:

- A: A person (P) has requested immunity;
- B: the immunity requests panel is satisfied that P has provided them with an account of their conduct which forms part of the Troubles and is true to the best of their knowledge and belief;
- C: the panel is satisfied that the conduct would expose P to investigation or prosecution for a Troubles-related offence.

Immunity comes in three forms, it may be:

- Specific immunity from prosecution – immunity in relation to all of the identified possible offences;
- General immunity from prosecution - immunity in relation to all serious or connected Troubles-related offences within a description determined by the panel framed by reference to P's disclosed conduct and covering all of the identified possible offences; or
- Specific and general immunity from prosecution – immunity in relation to all the identified possible offences and all serious or connected Troubles-related offences within a description determined by the panel.

The Explanatory Notes explain that an award of general immunity will be appropriate in most cases, but that the flexibility to grant specific immunity exists for situations such as where P had a lesser role in the death or serious injury, or where the factual position is straightforward.⁶³

Once granted, immunity cannot be revoked.

Procedure for requesting immunity

In order to be valid, a request for a grant of immunity must meet certain requirements:

- There must be no ongoing public prosecution against P for a relevant Troubles-related offence,⁶⁴ and no existing conviction;
- It must be made within five years of the ICIR being operational, unless a review into related conduct is already underway;

⁶³ Para 105

⁶⁴ A Troubles-related offence is "relevant" if the Chief Commissioner is satisfied that any relevant conduct by P constitutes the offence

- It must be in accordance with any rules or determinations made by the Secretary of State or the Chief Commissioner respectively concerning the procedures for making or dealing with requests.

The immunity requests panel:

The immunity requests panel would consist of the Chief Commissioner and two ICIR officers nominated by the Chief Commissioner.

In order to be eligible for nomination, an ICIR officer would need to fit into one of the following categories:

- A member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland, of at least ten years' standing;
- Satisfies the judicial-appointment eligibility condition on a ten year basis;
- Is an advocate or solicitor in Scotland of at least ten years' standing.

The panel would exercise its functions on behalf of the ICIR.

In determining a request for immunity, the panel would be required to form a view on the truth of P's account, based on any relevant information in the panel's possession, including any review carried out by the ICIR,⁶⁵ and any investigation previously carried out by any other body. The panel would not however be required to seek information from any other source.

3.5

Other functions

Information for prosecutors

Under **clause 22**, the Commissioner for Investigations would be able to provide information from a review to a prosecutor if they consider that there is evidence that relevant conduct constitutes an offence by an individual known to them.

The historical record of deaths

Clause 23 sets out how the ICIR would be required to keep a historical record of all deaths that are identified as being caused by conduct forming part of

⁶⁵ Clause 12 would provide for the ICIR to carry out a review into a death or other harmful conduct forming part of the Troubles following a request for immunity under clause 18. Clause 13(6)(C) requires the Commissioner for Investigations to take account of such a request when exercising operational control and deciding what steps are necessary in carrying out any review.

the Troubles, except those which have been the subject of review following a request.

The ICIR would be required to take reasonable steps to identify and obtain publicly available information, and would be able to request but not compel the provision of information.

The ICIR would be required to publish this information in a manner of its own deciding.⁶⁶

Information

Clauses 25-29 would govern the use and disclosure of information obtained by the ICIR.

The ICIR would be permitted to disclose information it held, subject to a number of prohibitions in relation to:

- Information identified as sensitive by the Commissioner for Investigations or by a relevant authority;
- Information identified as protected international information by the Secretary of State;
- Information that would prejudice national security; put anyone's life or safety at risk; or risk prejudicing criminal proceedings;
- Information the disclosure of which would contravene data protection legislation;
- Information the disclosure of which would be in breach of the Investigatory Powers Act 2016.

Clause 53 defines the terms “prejudicial information”, “protected international information”, and “sensitive information”.

Schedule 5 sets out a process for permitting the disclosure of information which would otherwise be prohibited. This includes disclosure to the Secretary of State, law enforcement, and prosecutorial and judicial authorities. It also provides for the Secretary of State to give permission for the disclosure of information which would otherwise be prohibited.

Schedule 6 sets out a scheme for the enforcement of the prohibition on the disclosure of certain information and **Schedule 7** sets out the procedure for identifying sensitive, prejudicial or protected international information.

The ICIR would be required to have regard to guidance issued by the Secretary of State on identifying sensitive information, and the Secretary of

⁶⁶ Clause 24

State would have a power to make regulations about the holding and handling of information.

Biometric material

Clause 30 would give the Secretary of State a regulation making power to require the preservation of biometric material taken before 2013 which would otherwise be destroyed, in order to ensure its availability for ICRIR investigations. The ICRIR would be required to carry out periodic reviews as to whether its continued retention was necessary.

Review and winding up of the ICRIR

Clauses 31 would require the Secretary of State to carry out a review of the performance of the ICRIR, to be laid before Parliament, by the end of the third year of its operation.

Clause 32 would give the Secretary of State a power to make regulations to wind up the ICRIR if satisfied that it was no longer needed.

4 Part 3: Investigations, legal proceedings and release of prisoners

Part 3 of the Bill would have the effect of bringing to an end all ongoing Troubles-related investigations and legal proceedings, subject to the conditional immunity provisions, and extend the early release scheme for prisoners convicted of Troubles related offences.

4.1 Criminal investigations and proceedings

Clauses 33 -37 would, from the date clause 33 comes into force, end ongoing and prevent new criminal investigations in relation to Troubles-related offences. They would further provide that no future criminal enforcement action would be possible in relation to a person who had been granted immunity.⁶⁷

The Chief Constable of PSNI and the chief officers of all forces in Great Britain would be required to inform the Secretary of State of any ongoing investigations into Troubles-related offences at the point clause 33 came into force.

It would not prevent an investigation being carried out other than by the ICIR if a public prosecution had begun before the provisions come into force and it relates to the prosecution.⁶⁸

Under the Bill's proposals, no criminal enforcement action could be taken in relation to a serious or connected Troubles-related offence against someone granted immunity under clause 18, or for any other Troubles-related offence.

Criminal enforcement action could be taken against a person not granted immunity in relation to a serious or connected Troubles-related offence after a referral to prosecutors from the Commissioner for Investigations.

Enforcement action would also be possible if a public prosecution had already begun before the provisions come into effect.

⁶⁷ Criminal enforcement action is defined as prosecution; the initiation or continuation of criminal proceedings; and arrest or detention in connection with an offence.

⁶⁸ A prosecution has begun for the purposes of the provisions when a prosecutor makes the decision to prosecute the relevant individual for the offence: cl 37(6)(b)

4.2

Civil proceedings, inquests and police complaints

Civil proceedings

Clause 38 would prevent the continuation of a relevant Troubles-related civil action that was brought on or after 17 May 2022 (the date of the Bill’s first reading), after the clause comes into force.

It would also prevent the initiation of an action after the provision comes into force.

Three conditions must be met for a claim to qualify as a “relevant Troubles-related claim”:

- A: the action must be to determine a claim arising out of conduct forming part of the Troubles;
- B: the action must be founded on:
 - Tort or delict;
 - A cause of action under fatal accidents legislation; or
 - A cause of action under the law of another jurisdiction that corresponds to either of the above;
- C: The time limit for bringing the action is given in one of the following statutes:
 - The Limitation (Northern Ireland) Order 1989;
 - The Foreign Limitation Periods (Northern Ireland) Order 1985;
 - The Limitation Act 1980;
 - The Foreign Limitation Periods Act 1984;
 - The Prescription and Limitation (Scotland) Act 1973; or
 - Section 190 of the Merchant Shipping Act 1995

A civil action would be permitted to proceed after the day the provision comes into force if a court of first instance has given a final judgment or determination before that date. Costs proceedings would also be able to continue.

Schedule 8 sets out the procedure for the courts to determine whether or not the prohibition applies. It would enable the Secretary of State to be notified

of, and join, an action, if there was sufficient evidence to raise an issue as to whether the prohibition should apply.

If sufficient evidence is adduced to raise an issue as to whether the action should be prohibited under clause 38, it would be for the claimant to prove that it was not. The court would be required to dismiss the action if the claimant was unable to do so. However, this would not affect the recovery of costs or expenses.

Schedule 9 would govern relevant Troubles-related actions involving prior cross-border mediation, to which clause 38(1) and (2) would not apply.⁶⁹

Such cases would not be able to continue from the point clause 38 came into force, if brought on or after the later of:

- The end of the relevant post-mediation period;⁷⁰ and
- The day of first reading of the Bill (17 May 2022)

The initiation of an action which involved prior cross border mediation would also be prohibited after clause 38 came into force.

Inquests, investigations and inquiries

Clause 39 would amend the Coroners Act (Northern Ireland) 1959.

New section 16A would require a coroner to close an inquest into a death resulting directly from the Troubles provided it had not reached an advanced stage,⁷¹ if it was initiated prior to the earlier of:

- 1 May 2023;
- The day on which clause 2(4) of the Bill comes into force

New section 16B would provide that a coroner dealing with an inquest which had reached an advanced stage could request that the ICIR review the death. Following the request, the coroner would be able to adjourn, resume or close the inquest.

New section 16C would provide that no new inquests into deaths resulting directly from the Troubles may be started after clause 39 comes into force.

Schedule 10 makes equivalent provision for inquests, investigations and inquiries in England and Wales and Scotland.

⁶⁹ The procedure in these cases is governed by the [2008 Mediation Directive](#), which was designed to facilitate access to alternative dispute resolution mechanisms and promote the amicable settlement of disputes, while encouraging the use of **mediation**.

⁷⁰ Defined as a period of eight weeks after the cross-border mediation ends: Sch 9, para 2

⁷¹ An inquest is defined as being at an advanced stage if hearing to ascertain who the deceased was and how, when and where they died had begun before the cut off: new s 16D(6)

Part 1 would introduce a new Schedule 1A to the Coroners and Justice Act 2009 which would govern investigations and inquests into Troubles-related deaths.

Part 2 would introduce a new Schedule A1 into the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 to govern inquiries and investigations into Troubles-related deaths.

Police complaints

Clause 40 would insert a new section 50A into the Police (Northern Ireland) Act 1998 to govern complaints relating to conduct forming part of the Troubles.

It would provide that on or after the day that the provision comes into force, that Act would cease to apply to complaints relating to conduct forming part of the Troubles made before that day, and would not apply to such complaints made on or after that day.

It would also provide that from the day the provision comes into force, the Chief Constable, the Board, the Director or the Department of Justice would cease to deal with any complaint referred before that day relating to conduct forming part of the Troubles.

4.3

Release of prisoners

Clause 41 introduces **Schedule 11**, which would amend the Sentences (Northern Ireland) Act 1998 which governs the early release scheme for prisoners convicted of certain offences which was established under the Belfast Agreement 1998.

The proposals would extend the existing early release scheme, which applies to convictions for specified offences committed between 8 August 1973 and 10 April 1998, to offences committed between 1 January 1966 and 8 August 1973 which arose out of conduct forming part of the Troubles. They would also extend the scheme to equivalent offences sentenced outside Northern Ireland.

The proposals would also extend the scheme to prisoners serving sentences of any length, and would allow two or more consecutive sentences to be treated as a single sentence, provided they were passed on the same occasion.

Finally, they would remove the requirement to serve a minimum sentence before release.

5

Part 4: Memorialising the Troubles

Clauses 42 to 50 of the Bill deal with “Memorialising the Troubles”.

5.1

Oral history

Clause 42 makes provision for an oral history initiative, which takes forward measures first proposed in the 2014 Stormont House Agreement. According to the Explanatory Notes, the “aim is to provide a central place for people of all backgrounds to share their experiences and perspectives relating to the Troubles”.⁷²

Subsection 42(1)(a) states that within the “initial period” (a period of one year beginning with the specified day),⁷³ the “designated persons”⁷⁴ (see **Section 5.8** below) “must secure” that (i) a study is carried out of Troubles-related oral history records⁷⁵ held in current collections in Northern Ireland,⁷⁶ and (ii) those current collections are analysed to identify groups and communities in Northern Ireland which are under-represented.⁷⁷

Under subsection 42(1)(b), the designated persons must also create, collect and preserve Troubles-related oral history in Northern Ireland, especially records which recount the personal experience of persons in groups and communities who are currently under-represented. Subsection 42(2) states that appropriate assistance (including training and resources) must be provided to this end.

Subsection 42(1)(c) obliges the designated persons to encourage and facilitate public engagement with Troubles-related oral history records,

⁷² Explanatory Notes, p4

⁷³ Subsection 50(1) defines the “specified day” as that stated in regulations as the commencement of the Troubles-related work programme

⁷⁴ Subsection 50(1) defines “designated persons” as those designated by the Secretary of State to work on the oral history initiative

⁷⁵ Subsection 42(6) defines a “Troubles-related oral history record” as a record in any form which “recounts personal experience relating to the Troubles” (including any effect on the person whenever it occurred) and “is of lasting historical significance”

⁷⁶ Subsection 42(6) defines “current collection” as one in existence immediately before the specified day

⁷⁷ Subsection 42(5) states that a group or community in Northern Ireland is under-represented in current collections if they “do not appropriately reflect the prevalence of that group or community in Northern Ireland during the period of the Troubles”

including by making such records more publicly accessible.⁷⁸ Subsection 42(3) states that events and services to this end must be arranged.

Subsection 42(1)(d) obliges the designated persons to (i) produce and keep up to date a catalogue of public-accessible Troubles-related oral history record and (ii) make it available on a website without charge.

Subsection 42(4) provides that designated persons may exercise their functions in relation to oral history records about events and conduct “before or after” the “period of the Troubles”.⁷⁹

Subsection 42(7) states that it does not matter whether an oral history record is made by, or received from, a person in the UK, Ireland or elsewhere.

5.2

Memorialisation strategy

Clause 43(1) provides that the designated persons must:

- a) Undertake a study of relevant and current memorialisation activities;
- b) Make recommendations about the initiation and carrying out of new memorialisation activities;
- c) Produce and publish a memorialisation strategy which sets out the findings of the study and recommendations during the initial period;
- d) Give a copy of the strategy to the Secretary of State “as soon as practicable” after it is produced.

Subsection 43(2) defines “relevant memorialisation activity” as one that is carried out in Northern Ireland for the purpose of “marking, commemoration, or providing information or education about”

- a) Events and conduct that formed part of the Troubles and occurred in Northern Ireland, or
- b) Events and conduct before or after the Troubles that occurred in Northern Ireland.

Subsection 43(3) gives the designated persons discretion to decide whether and to what extent their study and recommendations should cover relevant activities relating to events and conduct before and after the Troubles.

Subsection 43(4) states that the designated persons must consider (a) how relevant activities currently or will in the future promote reconciliation in

⁷⁸ Subsection 42(6) defines “publicly accessible” as accessible by the public or a section thereof, including on the basis of a subscription, membership or upon payment)

⁷⁹ Subsection 42(6) defines the “period of the Troubles” as 1 January 1966 to 10 April 1998

Northern Ireland, (b) be relevant to people living in Northern Ireland, and (c) appropriate non-UK memorialisation activities, which subsection 43(8) defines as an activity which (a) is undertaken outside the UK to mark, commemorate or provide information or education about past events or conduct and (b) appears to the designated persons to be appropriate to consider in carrying out their study and making recommendations.

Subsection 43(5) states that, in particular, consideration “must be given” to whether the establishment of a new museum, memorial “or similar project” should be recommended.

Subsection 43(6) provides that the public and other interested persons must be enabled to contribute to the study and its recommendations, in particular (subsection 43(7)), a) to suggest current memorialisation activities that should form part of the study, b) comment on current activities and c) to suggest new ones.

5.3 Response to memorialisation strategy

Clause 44 provides that the Secretary of State for Northern Ireland must consider and decide a response to each of the recommendations (about the initiation and carrying out of new memorialisation activities) made in the memorialisation strategy (subsection 44(1)(a)). Under (44(1)(b) this must be produced and published in a document including (i) the action proposed in response and (ii) reasons for not taking any action if applicable.

Subsection 44(2) provides that the Secretary of State must (a) comply with this requirement within one year of the strategy being given under 43(1)(d) and (b) consult the First Minister and deputy First Minister on the proposed action, or reasons for not taking action, before deciding a response to each recommendation.

5.4 Academic research

Clause 45(1) provides that the designated persons must secure that:

- a) Terms of reference are set for academic research into the Troubles;
- b) Academic research is carried out in accordance with those terms;
- c) The terms of reference are set out within the initial period;

- d) The researchers produce an “academic report” on the outcome of their research;⁸⁰
- e) The academic report is published and a copy given to the Secretary of State before the end of the seventh year of the period of operation of the ICRIIR.

Subsection 45(2) obliges the designated persons to “use their best endeavours” to make arrangements under which one of the UKRI’s Councils⁸¹ undertakes or participates in activities which enable or assist them (the designated persons) to comply with duties imposed by subsections (1)(a) to (1)(d).

Under subsection 45(3), the academic researchers must carry out their work (a) “independently of the influence of any other persons” and (b) in such ways as will “secure the confidence of the people of Northern Ireland in them and their work”.

Subsection 45(4) states that the terms of reference may provide (a) for academic research to be carried out into events before or after the Troubles and (b) criteria for identifying “the kind of events and conduct” into which such research is to be carried out.⁸²

Under subsection 45(5), the terms of reference must require researchers to take account of ICRIIR reports in carrying out their academic research. Furthermore, subsection 45(6) provides that the terms of reference must (a) require research to include the production of “an analysis of patterns and themes emerging from the relevant events and conduct” including, in particular, an analysis of women’s and girls’ experience of those events, and (b) may include provision about criteria for identifying the kinds of events and conduct researchers are to take into account for the purposes of such analysis.

Subsection 45(7) provides that the terms of reference must require the researchers to carry out a statistical analysis of (a) all ICRIIR reports⁸³ relating to a death and (b) the historical record. Under subsection 45(8) that analysis must, in particular, set out (a) number of deaths in those reports and that record, (b) an overview of biographical attributes of the deceased (including by age range and community background), and (c) an overview of the circumstances of the deaths (including when and where they occurred, and the involvement of any body or proscribed organisation).⁸⁴

⁸⁰ Subsection 45(9) defines “researchers” as the persons carrying out the academic research into the Troubles and producing the report

⁸¹ Subsection 45(9) defines “UKRI’s Council” as any of the Councils of United Kingdom Research and Innovation provided for by or under section 92 of the [Higher Education and Research Act 2017](#)

⁸² Subsection 45(9) defines “relevant events and conduct” as that forming part of the Troubles and that taking place before or after the Troubles

⁸³ Subsection 45(9) defines ICRIIR reports as final reports published in accordance with section 16

⁸⁴ Subsection 45(9) defines “proscribed organisation” as one that has been proscribed at any time under UK terrorism legislation

5.5 Annual reports

Clause 46(1) obliges the designated persons to (a) produce (for each reporting period)⁸⁵ a report on progress made in carrying out the Troubles-related work programme, (b) publish each annual report as soon as practicable after it is produced, and (c) give a copy to the Secretary of State at least two weeks before it is published.

5.6 Carrying out the Troubles-related work programme

Clause 47(1) states that the designated persons “must have regard” to the need to ensure that “the Troubles-related work programme”⁸⁶ (a) has support from “different communities in Northern Ireland”⁸⁷ for the way in which it is carried out and (b) takes into account a “variety of views” of the Troubles.

Subsection 47(2) provides that the designated persons must also “have regard” to the views given to them by any advisory forum (see **Section 5.7**). Subsections 47(3) and (4) concern operational arrangements, including publication thereof.

5.7 Advisory forum

Clause 48(1) states that the designated persons “must use their best endeavours” to establish an advisory forum consisting of “other persons”. In doing so, the designated persons “must have regard” to (2)(a) ensuring membership includes persons who “represent the views of victims and survivors of events and conduct forming part of the Troubles”, and (b) balanced “as respects those members who are associated with the different communities in Northern Ireland”.

Subsection 48(4) obliges the designated persons to publish the arrangements under which any advisory forum is established (including membership) as soon as practicable after they are made or amended.

⁸⁵ Subsection 46(2) defines “reporting period” as (a) the “initial period” and (b) each subsequent period of one year beginning immediately after the end of the previous reporting period

⁸⁶ Subsection 50(1) defines “Troubles-related work programme” as the functions imposed on designated persons by sections 42, 43 and 45

⁸⁷ Subsection 50(1) defines “different communities in Northern Ireland” as those which (a) “had or have differing views on the constitutional status of Northern Ireland” or (b) between which “there was or is political or sectarian hostility”

5.8 Designated persons and funding

Clause 49(1) states that the Secretary of State for Northern Ireland may, by regulations (subject to the negative procedure), designate a person whom he is “satisfied [...] would make a significant contribution” to the oral history initiative.

Subsection 49(2) says the Secretary of State “must have regard” to whether a designated person is “supported by different communities in Northern Ireland and will act independently of the influence of any other persons”. Under subsection 49(5) the Secretary of State may make payments or provide other resources to designated persons in connection with their work on this initiative.

5.9 Interpretation

Clause 50 defines terms for Part 4 of the Bill, part of which duplicates that in section 1.

6

Compatibility with the European Convention on Human Rights

The Secretary of State has made a statement under section 19(1)(a) of the Human Rights Act 1998 confirming that, in his view, the provisions of the Bill are compatible with the Convention rights.

Articles 2 and 3

Article 2 of the ECHR establishes the right to life and imposes on the State negative obligations not to take life intentionally, and positive obligations to protect life. The positive duty to protect life implies a duty to investigate unnatural deaths, including, but not confined to, deaths in which State agents may be implicated.⁸⁸

In 2003, the European Court of Human Rights (ECtHR) established that, in order to meet the requirements of Article 2, any investigation had to satisfy the following five criteria to be effective:

- the inquiry must be on the initiative of the State, and it must be independent;
- it must be capable of leading to a determination of whether any force used was justified, and to the identification and punishment of those responsible for the death;
- it must be prompt and proceed with reasonable expedition;
- it must be open to public scrutiny to a degree sufficient to ensure accountability; and
- the next-of-kin of the deceased must be involved in the inquiry to the extent necessary to safeguard their legitimate interests.⁸⁹

Case law has determined that an inquest satisfies this investigatory obligation.⁹⁰

⁸⁸ *McCann v UK* (1996) 21 EHRR 97; *Ergi v Turkey* (2001) 32 EHRR 18; *Yasa v Turkey* (1999) 28 EHRR 408, Joint Committee on Human Rights, [Scrutiny: First Progress Report](#), 24 January 2005, HL Paper 26 HC 224 2004-05, p48

⁸⁹ *Jordan v UK* (2003) 37 EHRR 2 as set out in the [Lord Chancellor's Exceptional Funding Guidance \(Inquests\)](#), 15 June 2018

⁹⁰ Judicial Communications Office Press Release, [Legacy inquest review](#), 7 June 2019

Article 3 prohibits torture and inhuman and degrading treatment and is subject to similar procedural obligations. As with Article 2, any investigation must be sufficiently adequate, prompt, independent, be subject to public scrutiny, and involve the victim.⁹¹

In 2011 the Committee of Ministers adopted guidelines on ‘Eradicating impunity for serious human rights violations’,⁹² including that

States should take all necessary measures to comply with their obligations under the convention to adopt criminal law provisions to effectively punish serious human rights violations through adequate penalties. These provisions should be applied by the appropriate executive and judicial authorities in a coherent and non-discriminatory manner.⁹³

The main compatibility issue raised by the Bill is therefore, whether the proposed conditional immunity scheme, the moratorium on legal proceedings, and the transfer for responsibility for reviews into Troubles-related deaths and serious harm are capable of fulfilling these obligations.

The Government’s human rights memorandum on the Bill acknowledges that the following clauses engage Article 2 and 3 of the ECHR: 2 (establishing the ICIR), 9-17 (reviews by the ICIR into Troubles-related deaths and other harmful conduct); clauses 19-21 (conditional immunity scheme); clauses 33 to 37 (prohibitions and restrictions on criminal investigations and prosecutions for Troubles-related offences); clause 39 (inquests, investigations and inquiries); clause 40 (police complaints); and clause 41 (prisoner release).⁹⁴

The ECtHR’s Guide to Article 2⁹⁵ notes that

There is no right to obtain a prosecution or conviction or indeed a particular sentence and the fact that an investigation ends without concrete, or with only limited, results is not indicative of any failings as such.⁹⁶

However, it further states that

... the Court considers that granting an amnesty in respect of the killing or ill treatment of civilians would run contrary to the State’s obligations under Articles 2 and 3 of the Convention since it would hamper the investigation of such acts and necessarily lead to impunity for those responsible (*Margus v Croatia*).⁹⁷

⁹¹ [Guide to Article 3](#), European Court of Human Rights, 2021

⁹² [Eradicating impunity for serious human rights violations: Guidelines and reference texts](#), Council of Europe 2011

⁹³ *Ibid*, p 8

⁹⁴ [European Convention on Human Rights Memorandum](#)

⁹⁵ [Guide to Article 2](#), European Court of Human Rights, 2021

⁹⁶ *Ibid*, para 174

⁹⁷ *Ibid*, para 181

In relation to Article 3, the ECtHR Guide states that “amnesties and pardons should not be tolerated” in cases concerning torture or ill treatment inflicted by State agents.⁹⁸

The Government’s human rights memorandum acknowledges that the ECtHR has “articulated a general opposition to reconciliation-linked amnesties”, and has repeatedly found that when granted in favour of the security forces they breach Article 2 and 3. Further, the Court’s case law applies not only to blanket amnesties but also to those granted in individual cases, and is “therefore applicable in principle to the model of conditional immunity that is being proposed in [the] Bill”.⁹⁹

The memorandum suggests however that there may be scope for some exception to this general principle, though its “scope and limits are not fully worked out in the case law”.¹⁰⁰ It cites a case in which the ECtHR accepted that States are justified in enacting amnesty laws (albeit on the basis of incomparable facts), provided a balance is maintained between the legitimate interests of the State and those of individuals.¹⁰¹ It further notes that the ECtHR has previously “countenanced the possibility of an amnesty being compatible with Article 2 in some particular circumstances, including where a reconciliation process is in existence”.¹⁰²

The Government’s position is that the package of measures in the Bill restricting criminal investigations, enforcement, inquests and police complaints, when taken together with the ICIR’s functions and powers, are compatible with Articles 2 and 3.

It notes a number of points in support of this position, including:

- reconciliation can provide a means of furthering the objective of Article 2 in the context of bringing a permanent end to sectarian conflict, particularly where there are parallel mechanisms for investigation and information recovery;¹⁰³
- the proposals do not only benefit State-agents: the definition of the Troubles in clause 1 ensures that the immunity provisions apply equally to State action and paramilitary activity;¹⁰⁴
- the Government takes the view that for the ICIR to be successful in conducting investigations and aiding reconciliation, it is essential to restrict the possibility of a prosecution to those who fail to participate;¹⁰⁵

⁹⁸ [Guide to Article 3](#), European Court of Human Rights, 2021, para 141

⁹⁹ [European Convention on Human Rights Memorandum](#), paras 43

¹⁰⁰ *Ibid*, para 44

¹⁰¹ *Ibid*, para 45-46: *Tarbuk v Croatia* (App. Np. 31360/10), 2012

¹⁰² *Ibid*, para 47: *Margus v Croatia* (2016) 62 EHRR 17

¹⁰³ *Ibid*, para 56

¹⁰⁴ *Ibid*, para 57

¹⁰⁵ *Ibid*, para 58

- the statutory immunity scheme, together with the restrictions on legal proceedings and new framework for investigations will create a structure based on the rule of law for investigating and resolving historic issues. By contrast the current arrangements are ad hoc and subject to delays, persistent legal challenges and cases collapsing, meaning few reach a satisfactory conclusion.¹⁰⁶
- Previous methods of investigation (discussed in the background section) have been controversial and have faced allegations of State bias.¹⁰⁷

The ECHR memorandum also considers the extent to which the Bill's provisions engage Article 6 (right to fair trial), Article 8 (right to privacy), Article 14 (right to non-discrimination in the enjoyment of Convention rights), and Article 1 of Protocol 1 (peaceful enjoyment of property)

¹⁰⁶ Para 60

¹⁰⁷ Para 61

7 Commentary

7.1 Reaction from veterans' groups

One of the aims of the Bill is to give veterans “the protections they deserve” while “implementing a process that provides answers for families”.¹⁰⁸

In a statement following introduction of the Bill, the Ministry of Defence said:

It delivers on our commitments to those who served in Northern Ireland, for too long, veterans and former service personnel have lived in fear of prosecution for actions taken whilst serving their country in order to uphold the rule of law. We are pleased that the Bill not only gives veterans the protections they deserve, but provides better outcomes for victims, survivors and their families.¹⁰⁹

On the issue of potential immunity from prosecution, the MOD clarified:

the independent body will grant immunity based on an individual's cooperation with the body's enquiries. This approach gives our veterans the certainty that they deserve but leaves open the route of prosecution if individuals are not deemed to have earned their immunity. For those who do not come forward, the possibility of prosecution will remain.

This earned immunity will not, however, apply to prosecution cases that are already underway, or may be so by the time the legislation enters into force and the Commission is established. Retrospective immunity will also not be granted.¹¹⁰

At present there is one veteran's case before the courts and one under reconsideration by the Public Prosecution Service for Northern Ireland. It is unclear how many additional prosecutions may be brought before any legislation is passed. In January 2021 the PSNI said that it had 33 active cases, although it did not provide details of the individuals involved or any timeframe for decision making. The PSNI has not provided a publicly available update on its active caseload since January 2021.

The Bill's proposals have largely been welcomed by veteran's groups.

¹⁰⁸ Prime Minister's Office, [The Queen's Speech 2022 \(PDF\)](#), 10 May 2022 and Ministry of Defence, [Press release](#), 18 May 2022

¹⁰⁹ Ministry of Defence, [Press release](#), 18 May 2022

¹¹⁰ Clause 19 (1)

The Northern Ireland Veterans Movement has expressed its support saying the Commission “holds no fear for them” and while “it is not what everybody wants...it is as close as we are going to get”.¹¹¹

The Veteran’s Commissioner for Northern Ireland, Danny Kinahan, has described the bill as a “tentative step in the right direction for progressing how we deal with the very emotive subject of legacy”. However, he also acknowledged that “of the very many veterans I have spoken to, none of them want their service in the protection of society equated to the heinous acts of terrorism”.¹¹² This view is reflected by Gavin Robinson MP who has said that the new legacy arrangements must ensure that “no moral equivalence” is drawn between police and soldiers, and paramilitary groups.¹¹³

Johnny Mercer MP, who has campaigned on behalf of Northern Ireland veterans, has also welcomed the Bill.¹¹⁴

7.2 Reaction from victims’ groups

Ian Jeffers, Commissioner for Victims and Survivors in Northern Ireland, was quoted by the BBC as describing the Bill as a “bitter pill to swallow”, and suggesting that the families of those killed would not want to give up on the chances of a conviction.¹¹⁵

Sandra Peake, Chief Executive of victims’ group Wave Trauma Centre said that families of those killed wanted to know “that their loved one’s life mattered and that there has been a full process to account for that”.¹¹⁶

Amnesty International UK said in a press release that the Bill did not protect victims’ rights, suggesting they had been sacrificed to protect perpetrators. Campaigns Manager Grainne Teggart said:

This bill is a disturbing interference in the justice system. It is clear the government has not shifted from its plan to sacrifice victims’ rights to shield perpetrators. Access to justice for serious crimes will be permanently removed in ‘Troubles’ related cases.

Despite thinly veiled attempts to dress this up as something new, there is no real departure from the government’s intention to legislate for a de facto amnesty. Nothing about this Bill is victim-centred and instead dismisses victims’ clear objections to the government closing down paths to justice.¹¹⁷

¹¹¹ The News Letter, “[Nothing to fear in new legacy bill for NI veterans – NIVM](#)”, 17 May 2022

¹¹² Northern Ireland Veterans Commissioner’s Office, [Press statement](#), 17 May 2022

¹¹³ Democratic Unionist Party, [Press statement](#), 17 May 2022

¹¹⁴ [Official Twitter account](#), 17 May 2022

¹¹⁵ [NI Troubles: Legacy Bill ‘removes opportunity for justice’](#), bbc.co.uk [accessed 20 May 2022]

¹¹⁶ Ibid

¹¹⁷ [Press release](#), 17 May 2022, amnesty.org.uk

7.3

Other reaction

Taoiseach Micheál Martin was quoted saying

Any attempt to depart from [the Stormont House Agreement] would need to be discussed by both governments and with all of the parties in an inclusive process. And there would need to be serious and credible engagement with victims and families.¹¹⁸

Sinn Féin president Mary Lou McDonald reportedly suggested that the Bill would mean “shredding the Stormont House Agreement” and accused the British government of treating families and survivors with contempt.¹¹⁹

Sinn Féin’s Stormont leader Michelle O’Neill reportedly suggested the Bill reflected the British Government’s attempt “to cover up their role in the conflict”, prioritising the wants of the British military over victims.¹²⁰

Gavin Robinson of the DUP said that the Bill should not undermine access to justice for victims, and Doug Beattie of the UUP said he had raised serious concerns about the Bill and its approach to those involved in terrorist attacks.¹²¹

Colum Eastwood, leader of the SDLP, suggested the Bill was intended to protect former soldiers and would shut down routes to justice.¹²²

¹¹⁸ [Controversial UK bill on legacy will not protect those who have a Troubles-related prosecution](#), Irish News, 18 May 2022

¹¹⁹ Ibid

¹²⁰ [British Government Legacy legislation backlash sees 70 civil actions launched amid outrage](#), belfastlive.co.uk, 17 May 2022

¹²¹ Ibid

¹²² Ibid

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Appendix One – Truth and Reconciliation Commissions: Some international comparisons

There are several examples from around the world where truth and reconciliation commissions have been established following a period of civil conflict, or breaches of international humanitarian law.

South Africa

The [Truth and Reconciliation Commission \(TRC\)](#) was a court-like body assembled in South Africa in 1995 after the end of Apartheid to help all sections of society deal with what had happened during this period. Under the leadership of Archbishop Desmond Tutu, anybody who felt they had been a victim of violence could come forward and be heard at the TRC. Perpetrators of violence could also give testimony and request amnesty from prosecution.

The TRC is the most cited example in relation to discussion of the Northern Ireland legacy proposals.

Sierra Leone

Following a devastating civil war in the 1990s, Sierra Leone established a Truth and Reconciliation Commission to create an impartial historical record of violations and abuses of human rights and international humanitarian law, and to “[respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered](#)”. It explicitly set out to ask how and why the people of Sierra Leone turned on each other, and how to effect change to prevent it happening again. The Commission [produced a final report](#) in 2004, encouraging the population to confront the past. Community-led reconciliation efforts found community led forums can enable perpetrators to ask forgiveness and [help rebuild community ties](#). However, a [study of such efforts](#) also found that the reconciliation treatment also worsened psychological health, increasing depression, anxiety, and posttraumatic stress disorder in these same villages.

Chile

In 1990 a National Truth and Reconciliation Commission was created to investigate the deaths and disappearances that occurred, often for political reasons, under the rule of Augusto Pinochet between 1973 and 1990. The aim was to document the most serious of human rights violations, gather evidence on the fate and whereabouts of individual victims, recommend reparations to the families of victims and recommend measures to prevent future violations. [The Commission reported in 1991](#). Often referred to as the Rettig report, it found that over 2,000 people had been killed for political reasons and as a result, dozens of military personnel were convicted of human rights abuses.

Brazil

A National Truth Commission was approved in 2011 to investigate state-sanctioned human rights violations between 1946 and 1988, and in particular during the period of military rule between 1964 and 1985.

The Commission lasted for two years and had full access to government files during this period. Victims or people accused of violations were encouraged to give testimony, although it was not mandatory.

A [report](#) was published in December 2014 which identified widespread state involvement in human rights violations, including enforced disappearances, torture and the death of political opponents. 434 people were killed or disappeared under the military regime, along with more than 8,300 indigenous people.

Further reading

- International Justice Resource Center, [Truth and Reconciliation Commissions](#)
- US Institute of Peace, [Truth Commissions Digital Collection](#)
- The Conversation, [“Do truth and reconciliation commissions heal divided nations?”](#), January 2019
- Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2010
- Institute for Democracy and Electoral Assistance, [Reconciliation after violent conflict](#), 2003


- Priscilla Hayner, Fifteen Truth Commissions – 1974 to 1994: A Comparative Study, *Human Rights Quarterly*, Vol 16 No 4 (1994), pp597-655

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