



# Northern Ireland Troubles (Legacy and Reconciliation) Bill

## HL Bill 37 of 2022–23

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Date published: 14 July 2022 (updated 3 November 2022)

On 23 November 2022, the second reading of the [Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#) is scheduled to take place in the House of Lords. The bill has been introduced by the government to address the legacy of the Troubles in Northern Ireland. Key measures of the bill would:

- Create the Independent Commission for Reconciliation and Information Recovery (ICRIR) to conduct investigations into Troubles-related deaths and very serious injuries. The body would compile and publish a report of its findings following each review.
- Introduce a conditional immunity scheme, allowing those who cooperate with the ICRIR to receive immunity from prosecution from Troubles-related offences, where certain conditions are met. In the event immunity is not granted, the ICRIR could continue its investigation and submit a file for prosecution.
- Prevent investigations into Troubles-related conduct, other than those conducted by the ICRIR.
- Prohibit civil claims that had not been filed by the date of the bill's introduction (17 May 2022).
- Stop coroner's inquests which had not reached an advanced stage and prohibit future inquests into Troubles-related deaths. Those cases not at an advanced stage could be referred to the ICRIR for investigation.
- Initiate a programme of memorialisation.

The bill completed its stages in the House of Commons on 4 July 2022, following a vote at third reading. Throughout the bill's passage in the

Commons, opposition was voiced by the Labour party and the political parties from Northern Ireland. They expressed concern about the lack of consensus on the bill and argued that it was balanced in the favour of offenders and would not aid reconciliation. Members across the political spectrum were concerned about the conditions for granting immunity; the ending of criminal prosecutions and legal proceedings; changes to the early prisoner release scheme; and its compliance with the European Convention on Human Rights.

The only change made to the bill during its passage through the House of Commons was to exclude sexual offences from within the scope of the immunity from prosecution provisions. However, the government gave members an undertaking to revisit issues such as sentencing and non-compliance with the commission as it reached the House of Lords.

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## I. Background

The ‘Troubles’ is a term used to describe the violence that occurred in Northern Ireland between around 1968 and 1998, when the border between Northern Ireland and the Republic of Ireland was securitised. This meant that border crossings by road or rail were subject to checks by the police and the British army. Custom arrangements had been in place since 1923.

This period also saw the collapse of Northern Ireland’s government and parliament as a result of the deteriorating security situation and worsening political relations. The Parliament of Northern Ireland was prorogued in 1972 and then abolished in 1973.<sup>1</sup> A devolved Northern Ireland Assembly was not established until 1998–99, following the Belfast Agreement, otherwise known as the Good Friday Agreement (GFA).

During the Troubles in Northern Ireland, more than 3,500 people were killed.<sup>2</sup> Estimates used by the government suggest that of those killed, 58% were the responsibility of republican paramilitaries, 30% of loyalist paramilitaries, and 10% of the security forces.<sup>3</sup> Operation Banner, launched in 1969 in response to the breakdown in public order in Northern Ireland, was the longest continuous deployment of armed forces personnel in British military history.<sup>4</sup> It lasted almost 38 years. The Ministry of Defence estimates that between August 1969 and July 2007 1,441 serving military personnel died on deployment or in related paramilitary attacks.<sup>5</sup>

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<sup>1</sup> Further information about the history of the constitutional arrangements in Northern Ireland and the introduction of direct rule by the UK government in 1972 can be found in the House of Commons Library briefing: [‘Parliament and Northern Ireland, 1921–2021’](#), 12 October 2021.

<sup>2</sup> [Explanatory notes](#), p 6.

<sup>3</sup> [Explanatory notes](#), p 6; and [CAIN Web Service](#) summarising: An Index of Deaths from the Conflict in Ireland 1969–1993, Malcolm Sutton.

<sup>4</sup> Ministry of Defence, [‘Commemorations for the 50th anniversary of Op Banner announced’](#), 19 July 2019.

<sup>5</sup> Ministry of Defence, [‘Commemorations for the 50th anniversary of Op Banner announced’](#), 19 July 2019.

The GFA was reached following multi-party negotiations and signed on 10 April 1998. The agreement was concerned with British-Irish relations and principally dealt with restoring devolved institutions in Northern Ireland. It also led to the Northern Ireland (Sentences) Act 1998, under which those convicted of scheduled offences in Northern Ireland (or, for those sentenced outside Northern Ireland, similar offences) could apply for early release.<sup>6</sup> However, the GFA did not include a mechanism for dealing with unresolved killings during the Troubles.<sup>7</sup> It did not provide an amnesty for crimes which had not yet been prosecuted.

## **1.1 Legacy investigations into Troubles-related offences**

### **1.1.1 Historical Enquiries Team**

The process for investigating Troubles-related offences began in 2006 with the creation of the Police Service for Northern Ireland (PSNI) Historical Enquiries Team (HET). This body was created in response to judgments at the European Court of Human Rights (ECtHR) on several complaints concerning deaths in Northern Ireland during the Troubles in which there had been state involvement.<sup>8</sup> The court determined there had been breaches of article 2 of the European Convention on Human Rights (ECHR), which protects the right to life.

HET was set up to investigate all deaths attributable to the security situation that occurred in Northern Ireland between 1968 and the GFA in 1998. HET estimated that there were 3,260 deaths attributable to the Troubles within

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<sup>6</sup> The existing early release scheme in the Sentences Act applies to persons convicted of “scheduled offences” between 8 August 1973 and 10 April 1998. “Scheduled offences” are those specified in the Northern Ireland (Emergency Powers) Act 1973 and subsequent Northern Ireland Emergency Powers Acts. As well as several offences specifically concerned with terrorism, they include general offences such as murder, manslaughter, kidnapping, and blackmail.

<sup>7</sup> House of Commons Library, ‘[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill 2022–2023](#)’, 20 May 2022, p 11.

<sup>8</sup> HM Inspectorate of Constabulary, ‘[Inspection of the Police Service of Northern Ireland Historical Enquiries Team](#)’, 2013, p 33.

this period.<sup>9</sup> One of its key objectives was:

[to] 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; and to do so in a way that commands the confidence of the wider community.<sup>10</sup>

A 2013 report by HM Inspectorate of Constabulary was critical of the HET. It said HET's approach was inconsistent and reviewed state involvement cases with less rigour in some areas.<sup>11</sup> In the same year, the PSNI announced that it would review all military cases relating to the period between 1968 and the GFA.<sup>12</sup>

### **1.1.2 Legacy Investigations Branch**

In 2014, PSNI disbanded HET and replaced it with a smaller Legacy Investigations Branch (LIB). LIB continues to review all murder cases linked to the Troubles. Any decision to prosecute is referred to the director of public prosecutions for Northern Ireland (DPP NI). It is independent of the Ministry of Defence and the British government.

In June 2021, a case was brought before the UK Supreme Court questioning the independence of the LIB and its ability to review or conduct investigations into legacy deaths. The court dismissed the case.<sup>13</sup>

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<sup>9</sup> HM Inspectorate of Constabulary, '[Inspection of the Police Service of Northern Ireland Historical Enquiries Team](#)', 2013, p 6.

<sup>10</sup> HM Inspectorate of Constabulary, '[Inspection of the Police Service of Northern Ireland Historical Enquiries Team](#)', 2013, p 7.

<sup>11</sup> HM Inspectorate of Constabulary, '[Inspection of the Police Service of Northern Ireland Historical Enquiries Team](#)', 2013, p 16.

<sup>12</sup> Police Service for Northern Ireland, '[PSNI clarify position in relation to legacy investigations](#)', 8 December 2016.

<sup>13</sup> [In the matter of an application by Margaret McQuillan for Judicial Review](#) (Northern Ireland) (Nos 1, 2 and 3) [2021] UKSC 55 On appeals from: [2019] NICA 13; [2019] NICA 46.

As of May 2022, the PSNI had a caseload of over 900 cases involving nearly 1,200 deaths.<sup>14</sup> During a House of Commons Northern Ireland Affairs Committee evidence session in September 2020, the chief constable of the PSNI said that to go through the current LIB caseload, “which is not all the 3,500 deaths, would take over 20 years from a standing start now on the current resource base”.<sup>15</sup>

### 1.1.3 Operation Kenova team

In 2016, Operation Kenova was established to investigate the alleged crimes of a former British army agent codenamed ‘Stakeknife’ during the Troubles.<sup>16</sup> The focus of the investigation is to determine whether there is evidence of the commission of criminal offences by the alleged agent including murders, attempted murders and unlawful imprisonments attributed to the Provisional IRA. It also looks at whether there is evidence of criminal offences having been committed by members of the British army, the security services or other government personnel.

The Operation Kenova team is independent and led by former chief constable Jon Boutcher. Since 2019, the team’s remit has been expanded, and it is currently conducting a series of independent historical investigations relating to criminal offences committed during the Troubles.<sup>17</sup>

In August 2021, the Operation Kenova team said that it had provided the DPP NI with 31 files relating to 17 murder victims and 12 abductions.<sup>18</sup> However, at that point it had not led to any prosecutions. In a statement in August 2021, Jon Boutcher explained that the number of files given to the DPP NI demonstrated what could be “achieved evidentially”. Mr Boutcher

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<sup>14</sup> [Explanatory notes](#), p 6.

<sup>15</sup> House of Commons Northern Ireland Affairs Committee, [‘Oral evidence: Addressing the legacy of Northern Ireland’s past: The UK government’s new proposals’](#), 2 September 2020.

<sup>16</sup> Kenova, [‘Operation Kenova’](#), accessed 6 July 2022.

<sup>17</sup> Kenova, [‘About Jon Boutcher’](#), accessed 6 July 2022.

<sup>18</sup> Kenova, [‘Five years on: More than 200 murders now under review by Kenova’](#), 21 August 2021.

stated that the DPP NI had advised the timescale for prosecution decisions regarding the Kenova files was spring 2022.

### 1.1.4 Inquests

The Coroners Service for Northern Ireland also has responsibility for investigating the circumstances surrounding Troubles-related deaths. This is separate from the work of the LIB. A coroner's inquest is a fact-finding exercise and is not a trial.

In 2018, there were over 50 legacy inquests, relating to almost 100 deaths, proceeding through the Northern Ireland coroners' courts.<sup>19</sup> In 2019, a dedicated unit was established within the Coroners Service for Northern Ireland to deal with outstanding legacy inquests within a five-year period.

The Covid-19 pandemic significantly impacted the schedule of legacy inquests. In June 2021, the then presiding coroner, Mr Justice McFarland, issued a statement setting out the updated five-year plan.<sup>20</sup> A statement in March 2022 identified nine cases that would be progressed in 2022.<sup>21</sup>

In evidence given to the House of Commons Northern Ireland Affairs Committee, former Northern Ireland Lord Chief Justice Sir Declan Morgan provided further information on the progress of the legacy inquests:

Of the 56 inquests that comprise the legacy inquests, 20 have been heard so far. Of those, three are still waiting for decisions. There are three that are at hearing. That leaves 36. Of those 36, five are listed for hearing in the course of year two, which brings you down to 31. A further 10 are already identified as year three cases, which will get hearing dates, other things being equal, between the end of 2022 and

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<sup>19</sup> Northern Ireland Office, '[Consultation paper: Addressing the legacy of Northern Ireland's past](#)', May 2018, p 15.

<sup>20</sup> Northern Ireland Judicial Communications Office, '[Legacy inquest review](#)', 2 June 2021.

<sup>21</sup> Northern Ireland Judicial Communications Office, '[Legacy inquest review](#)', 22 March 2022.



2023. That would leave standing, as it were, 21 inquests. Some of those inquests relate to multiple people. For instance, the Stalker/Sampson inquest relates to four people. That would leave 18 cases to be dealt with.<sup>22</sup>

Detailed information on the various investigative bodies, schemes and prosecutions in relation to crimes committed during the Troubles can be found in the House of Commons briefing, '[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill 2022–2023](#)' (20 May 2022).

## 1.2 Policy on legacy issues: Proposals since 2014

### 1.2.1 Stormont House agreement

A plan on how to address legacy issues was part of the Stormont House agreement, which was reached in December 2014. Negotiations on the political accord included the Northern Ireland political parties represented in the Northern Ireland Assembly,<sup>23</sup> the UK government and the Irish government.<sup>24</sup> Participants agreed that any approach to legacy issues should adhere to the following principles:

- promoting reconciliation
- upholding the rule of law
- acknowledging and addressing the suffering of victims and survivors
- facilitating the pursuit of justice and information recovery
- being human rights compliant
- being balanced, proportionate, transparent, fair and equitable

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<sup>22</sup> House of Commons Northern Ireland Affairs Committee, '[Oral evidence: Addressing the legacy of Northern Ireland's past: The UK government's new proposals](#)', 22 June 2022, Q 600.

<sup>23</sup> Alliance, Democratic Unionist Party, Ulster Unionist Party, Social Democratic and Labour Party, and Sinn Féin.

<sup>24</sup> Further information on the Stormont House agreement measures relating to legacy issues can be found in the House of Commons Library briefing '[Northern Ireland: Stormont House agreement and implementation](#)', 19 August 2015.

They agreed a series of detailed measures, including the creation of a new independent historical investigations unit (HIU) to take forward investigations into outstanding deaths from the Troubles.

### **1.2.2 Addressing the legacy of Northern Ireland's past: 2018 consultation**

On 11 May 2018, the Northern Ireland Office launched a public consultation 'Addressing the legacy of Northern Ireland's past'.<sup>25</sup> The consultation took forward the proposals on the HIU, as set out in the Stormont House agreement.

In the forward to the consultation, the then secretary of state for Northern Ireland, Karen Bradley, addressed the subject of immunity. Ms Bradley stated:

[...] the proposals must follow the rule of law. As the government's manifesto for Northern Ireland at the 2017 general election made clear, "We also continue to believe that any approach to the past must be fully consistent with the rule of law. Conservatives in government have consistently said that we will not introduce amnesties or immunities from prosecution." This government has always shared the view that amnesties are not the right approach and believes that justice should be pursued.<sup>26</sup>

In July 2019, the government published an analysis of the consultation responses.<sup>27</sup>

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<sup>25</sup> Northern Ireland Office, '[Consultation paper: Addressing the legacy of Northern Ireland's past](#)', May 2018.

<sup>26</sup> Northern Ireland Office, '[Consultation paper: Addressing the legacy of Northern Ireland's past](#)', May 2018, p 4.

<sup>27</sup> Northern Ireland Office, '[Addressing the legacy of Northern Ireland's past: Analysis of the consultation responses](#)', July 2019.

### 1.2.3 ‘New decade, new approach’ deal

The ‘New decade, new approach’ agreement published on 9 January 2020 restored devolved government in Northern Ireland.<sup>28</sup> There had not been a fully functioning assembly or executive in Northern Ireland since January 2017. As part of the deal, the UK government made a commitment to introduce legislation within 100 days to complete the implementation of the framework in the Stormont House agreement for dealing with the legacy of the Troubles in Northern Ireland. The UK government also committed to provide funding to support the implementation of the Stormont House agreement’s proposals on legacy.

The UK government stated that it would “start an intensive process” with the Northern Ireland parties and the Irish government “to maintain a broad-based consensus on these issues, recognising that any such UK Parliament legislation should have the consent of the NI Assembly”.<sup>29</sup>

### 1.2.4 Addressing the legacy of Northern Ireland’s past: 2019 command paper

In July 2021, the then secretary of state for Northern Ireland, Brandon Lewis, presented a command paper to Parliament laying out the UK government’s new approach to dealing with the Troubles’ legacy issues.<sup>30</sup> It set aside previous proposals. The new measures included:<sup>31</sup>

- An independent information recovery body focused on the provision of information about Troubles-related deaths and injuries. Inquiries would be for the purpose of “information recovery” rather than to “create a file for prosecution”.
- A statute of limitations applied equally to all parties linked to all

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<sup>28</sup> HM Government, ‘[New decade, new approach](#)’, January 2020.

<sup>29</sup> HM Government, ‘[New decade, new approach](#)’, January 2020, p 48.

<sup>30</sup> HM Government, ‘[Addressing the legacy of Northern Ireland’s past](#)’, CP 498, July 2021.

<sup>31</sup> HM Government, ‘[Addressing the legacy of Northern Ireland’s past](#)’, CP 498, July 2021.

Troubles-related incidents. This would bring an immediate end to all criminal investigations into Troubles-related offences.

- An oral history initiative of the Troubles.
- An end to all current and future Troubles-related civil cases and inquests.

In presenting the proposals, the UK government stated that the current system was not “working for anyone”.<sup>32</sup> It argued that “lengthy, drawn out and complex” legal processes “stifle the critical information recovery and reconciliation measures that could help many families”. It said that time was “not on our side”. The government stated it would “engage intensively and widely with stakeholders, including the Northern Ireland parties” before introducing legislation.<sup>33</sup>

These proposals were criticised by political parties in Northern Ireland and the Irish Government, the families of the victims of the Troubles on all sides, and campaign groups. Questions were raised about the compatibility of the measures with the ECHR. On 20 July 2021, the Northern Ireland Assembly was recalled to discuss the proposals. The Assembly passed a motion criticising the plan to introduce a statute of limitations.<sup>34</sup>

In the 2022 Queen’s speech, the UK government made a commitment to introduce “legislation to address the legacy of the past”.<sup>35</sup> The government stated it would introduce a Northern Ireland Troubles (Legacy and Reconciliation) Bill that would:

[...] fulfil our manifesto commitment to address the legacy of Northern Ireland’s past, providing better outcomes for victims, survivors and their families and giving veterans the protections they deserve.<sup>36</sup>

<sup>32</sup> HM Government, [‘Addressing the legacy of Northern Ireland’s past’](#), CP 498, July 2021, p 6.

<sup>33</sup> [HC Hansard, 26 January 2022, col 984](#).

<sup>34</sup> Northern Ireland Assembly, [‘Official report’](#), 20 July 2021.

<sup>35</sup> HM Government, [‘The Queen’s Speech’](#), 10 May 2022.

<sup>36</sup> HM Government, [‘The Queen’s Speech 2022: Briefing notes’](#), 10 May 2022, p 13.

On 17 May 2022, the government introduced the bill into the House of Commons. It completed its stages in the House on 4 July 2022.

## 2. Provisions of the bill

The Northern Ireland Troubles (Legacy and Reconciliation) Bill was introduced in the House of Lords on 5 July 2022.

The government has published [explanatory notes and a human rights memorandum](#) to the bill. The only changes made to the bill during its Commons stages were to ensure that immunity could not be granted to those who had committed Troubles-related sexual offences (see section 3 of this briefing for further details). A detailed clause-by-clause description of the bill as introduced in the House of Commons can be found in the House of Commons Library briefing '[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill 2022–2023](#)' (20 May 2022).

### 2.1 Part I: Meaning of the “Troubles” and other key expressions

Clause 1 sets out key definitions used throughout the bill. These include:

- The “Troubles” is defined as events and conduct that related to Northern Ireland affairs between 1 January 1966 and 10 April 1998.
- “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.

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

### **2.2.1 Creation of the ICRIR**

Clauses 2 to 6 and schedules 1 and 2 of the bill would provide for the formation of the Independent Commission for Reconciliation and Information Recovery (ICRIR) and would establish its working conditions. The ICRIR would have powers to investigate deaths and instances of serious injury resulting from conduct forming part of the Troubles in Northern Ireland.

Clause 2 lists the six statutory functions of the body:

- carry out reviews (which include investigations overseen by the commissioner for investigations) into any deaths that resulted from conduct forming part of the Troubles
- carry out reviews of other harmful conduct forming part of the Troubles (defined in clause 1)
- produce reports on the findings of each of these reviews
- determine whether to grant immunity from prosecution for serious or connected Troubles-related offences other than Troubles-related sexual offences
- refer deaths that were caused by conduct forming part of the Troubles, and other harmful conduct forming part of the Troubles, to prosecutors
- produce a historical record of deaths that resulted from conduct forming part of the Troubles

The ICRIR would be required to publish a report on its work annually and to provide the secretary of state with a copy of each report. The bill would require the secretary of state for Northern Ireland to provide financial resources to the ICRIR for it to discharge its functions.

The ICRIIR would consist of between three and five commissioners including:

- The chief commissioner: would be responsible for publishing investigation reports; determining the procedures to be used in relation to inquests for immunity; and chairing the immunity request panels.
- The commissioner for investigations: would have “operational control” over investigations by the ICRIIR.
- Between one and three other commissioners.

Clause 6 would give the commissioner for investigations the powers and privileges of a constable. They could designate these powers to other commissioners and ICRIIR officers. Clause 5 would give the ICRIIR powers to require the disclosure of information, documents and other material by “relevant authorities”. This information would be sought for the “purposes of, or in connections with”:

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

Schedule 1 sets out the appointments process for the commissioners. The secretary of state for Northern Ireland would be responsible for the appointment for all commissioners. Once appointed, commissioners would hold office until they resign. The secretary of state could call on them to resign under certain circumstances, such as if they have been given a custodial sentence on conviction of a crime.

### **2.2.2 Admissibility of information**

Clauses 7 and 8 would limit the use of information provided to the ICRIIR in civil and criminal proceedings. Clause 7 states it would not be possible to use evidence against a person in criminal proceedings that was provided by

that person to the ICRIR or obtained by the ICRIR. This prohibition would apply to “compelled material” which clause 7 defines as information 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 section 2.2.3 of this briefing).

Any other material may not be used in evidence against that person except in the following two circumstances:

- The material was provided to an ICRIR officer designated with constable powers under clause 6. For example, the information was provided by a suspect during a formal interview under caution.<sup>37</sup>
- The criminal proceedings relate to the ICRIR’s exercise of its functions, any other conduct by the ICRIR, or the conduct of current and former ICRIR staff and others in a similar position. For example, the prosecution of a person who was found to have deliberately made false statements on an application form in order to secure employment with the ICRIR.<sup>38</sup>

Clause 8 states that “protected material”, being material provided to or obtained by the ICRIR in the exercise of its functions, would be inadmissible in the following proceedings:

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

This would be subject to an exemption for proceedings relating to the operation of the ICRIR and its officers, or any judicial review or equivalent proceedings relating to the conduct or exercise of functions of a person

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<sup>37</sup> [Explanatory notes](#), p 10.

<sup>38</sup> [Explanatory notes](#), p 10.



other than the ICRIR.<sup>39</sup>

### **2.2.3 Reviews of deaths and other harmful conduct**

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

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, another family member could request one where appropriate. The commissioner for investigations would decide when such a request was appropriate. The secretary of state would be able to request a review of a death caused by conduct forming part of the Troubles, whether or not it was caused “directly” by the conduct.

The attorney general for Northern Ireland and other specified officials would be able to request a review, but only where the “death was caused directly by conduct related to the Troubles”. Clause 9 defines death caused directly by conduct related to the Troubles as one “wholly caused by physical injuries or physical illness, or both, that resulted directly from an act of violence or force, which was conduct forming part of the Troubles”.

A request to review other harmful conduct may be made by a person who suffered serious physical or mental harm as a result. The secretary of state could also request such a review.

Requests for a review of a death or of harmful conduct must be made within five years of the ICRIR being operational.

The bill provides for the commissioner for investigations to decide how requests should be made, whether they are valid and how the requests should be dealt with.

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<sup>39</sup> [Explanatory notes](#), p 11.

Clause 14 would give the commissioner 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. It would also make provisions for a relevant authority to argue that compliance by a particular person would prejudice national security and nominate an alternative. The commissioner would be able to determine whether to change, revoke or leave the notice unchanged.

Schedule 4 would provide for the issuing of fines for non-compliance.

#### **2.2.4 Immunity from prosecution**

Clauses 18 to 22 set out the process for the ICRIR to grant immunity from prosecutions for Troubles-related offences. The decision would be taken by the immunity request panel. The panel would consist of the chief commissioner and two ICRIR officers nominated by the chief commissioner.

Clause 18 sets out the conditions that would need to be met for a person to be granted immunity:

- The person has requested immunity from prosecution.
- The immunity requests panel is satisfied that the person has provided an account which is true to the best of their knowledge and belief and which describes conduct by that person which forms part of the Troubles.
- The panel is satisfied that the person's conduct, as described by them in their account, would tend to expose that person to a criminal investigation for involvement in, or prosecution for, one or more serious or connected Troubles-related offences.

Clause 19 provides that the ICRIR must not grant immunity from prosecution for any Troubles-related sexual offences, or a description of offences which includes any Troubles-related sexual offence. The bill would

give the secretary of state the power, under the negative procedure,<sup>40</sup> to specify the offences which would comprise the definitions “sexual offence” and “inchoate sexual offence”, under the provisions of the bill.<sup>41</sup>

If the panel decided to grant immunity, it would be required to choose from one of the following three options:

- specific immunity from prosecution: immunity from all 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
- specific and general immunity from prosecution

Requests for immunity must be made within five years of the ICRIIR being operational. Once granted, immunity could not be revoked.

### **2.2.5 Information for prosecutors**

Clause 23 would give the commissioner for investigations a power to refer a case to prosecutors and would govern how that discretion should be exercised. The commissioner may, following a review, refer relevant conduct to a prosecutor if the commissioner considers that there is evidence that it constitutes an offence by an individual known to them.<sup>42</sup>

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<sup>40</sup> Secondary legislation laid under the negative procedure becomes law on the day the minister signs it and automatically remains law unless a motion to reject it is agreed by either House within 40 sitting days.

<sup>41</sup> There are instances where a substantive offence may not have been completed but nevertheless an offence of a different kind has been committed because of the actions or agreements in preparation for the substantive offence. These are known as inchoate offences (Crown Prosecution Service, [‘Inchoate offences’](#), 21 December 2018).

<sup>42</sup> [Explanatory notes](#), p 18.

## **2.3 Part 3: Investigations, legal proceedings and the release of prisoners**

Part 3 of the bill would bring to an end all ongoing Troubles-related investigations and legal proceedings, subject to the conditional immunity provisions. It would also extend the early release scheme for prisoners convicted of Troubles-related offences.

### **2.3.1 Criminal investigations and proceedings**

Clauses 34 to 38 would provide for the end of all ongoing criminal investigations into Troubles-related offences. They would provide that no future criminal enforcement action would be possible in relation to a person who had been granted immunity under the provisions of the bill.

Under clause 34 no criminal investigations into any Troubles-related offence could be initiated or continued, from the date the clause came into force. This prohibition would not prevent the ICRIR exercising its functions.

The head of each police force in the UK would be under a duty to notify the secretary of state of any ongoing criminal investigations of Troubles-related offences at the point clause 34 came into force.

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.

Clause 38 states that clause 34 would not prevent a criminal investigation of a Troubles-related offence being carried out by a person other than the ICRIR if:

- a public prosecution had been begun before the day on which clause 34 came into force, and

- the criminal investigation is carried out for the purposes of that prosecution

### **2.3.2 Civil proceedings**

Clause 39 would prohibit relevant Troubles-related civil actions from being brought after the clause had been commenced, and from being continued if the claim was brought on or after the first reading of the bill in the House of Commons (17 May 2022).

A civil action would be allowed to proceed after the date the provision came into force if a court of first instance had given a final judgment or determination before that date.

### **2.3.3 Inquests, investigations and inquiries**

Clause 40 would amend the Coroners Act (Northern Ireland) 1959 to require a coroner to close an inquest into a death resulting directly from the Troubles provided it had not reached an “advanced stage”, if it was initiated prior to the earlier of:

- 1 May 2023
- the day on which clause 2 of the bill came into force

A coroner dealing with an inquest which had reached an advanced stage could request that the ICRIIR review the death.

Schedule 10 would make equivalent provisions for inquests, investigations and inquiries in England, Wales and Scotland.

### **2.3.4 Police complaints**

Clause 41 would provide for all complaints to cease that relate to conduct

forming part of the Troubles. This would apply to complaints made before and after the provision came into force.

### **2.3.5 Release of prisoners**

Clause 42 would give effect to schedule 11 which amends the Sentences (Northern Ireland) Act 1998.

The provisions would extend the existing early release scheme, which currently applies to specified offences committed between 8 August 1973 and 10 April 1998, to specified offences committed between 1 January 1966 and 8 August 1973. They would also extend the scheme to equivalent offences sentenced outside Northern Ireland. The provisions would extend the scheme to include prisoners serving sentences of any length.

The provisions would also remove the requirement for an offender to have served a minimum sentence of two years before early release.

## **2.4 Part 4: Memorialising the Troubles**

Clauses 43 to 51 of the bill would make provisions for memorialising the Troubles.

Clause 43 would make provision for an oral history initiative, “taking forward measures proposed in the Stormont House agreement”.<sup>43</sup> The explanatory notes to the bill state:

The aim is to provide a central place for people of all backgrounds to share their experiences and perspectives relating to the Troubles.<sup>44</sup>

Under the provisions, designated persons must create, collect and preserve

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<sup>43</sup> [Explanatory Notes](#), p 25.

<sup>44</sup> [Explanatory Notes](#), p 4.

Troubles-related oral history in Northern Ireland, especially records which “recount experiences of persons in groups and communities who are currently under-represented”. Designated persons must ensure the work programme has support from “different communities in Northern Ireland” for the way it is carried out and takes into account a “variety of views” of the Troubles (clause 48). They must publish an annual report on the progress made in carrying out the Troubles-related work programme (clause 47).

Clause 44 would require designated persons to publish an evidence-based memorialisation strategy within one year that sets out concrete recommendations for structures and initiatives to memorialise the Troubles. This report must be presented to the secretary of state.

Clause 45 would provide that the secretary of state must respond to any recommendations for new memorialising activities in Northern Ireland that are made in the memorialisation strategy. The responses must be published by the secretary of state within one year of receiving the report and following consultation with the first minister and deputy first minister of Northern Ireland.

Clause 46 would make provision for academic research and statistical analysis relating to the Troubles.

Clause 49 would provide for an advisory forum to be established. Designated persons would need to ensure that the membership included people who represented the views of victims and survivors of events and conduct forming part of the Troubles, and was balanced in respect of those associated with the different communities in Northern Ireland.

## **2.5 Compatibility with the European Convention on Human Rights**

On 16 May 2022, the Northern Ireland Office issued a European Convention on Human Rights memorandum, which confirmed that in its view the provisions of the bill were compatible with the ECHR.

### 2.5.1 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. Case law has determined that an inquest satisfies this investigatory obligation.<sup>45</sup>

The ECtHR has established that in order to meet the requirements of article 2, any investigation must satisfy the following five criteria to be effective:

- must be on the initiative of the state and must be independent
- 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
- must be prompt and proceed with reasonable expedition
- must be open to public scrutiny to a degree sufficient to ensure accountability
- must involve next-of-kin of the deceased in the inquiry to the extent necessary to safeguard their legitimate interests

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

### 2.5.2 Human rights memorandum

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

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<sup>45</sup> Judicial Communications Office, '[Legacy inquest review](#)', 7 June 2019, p 1.



security forces they breach articles 2 and 3.<sup>46</sup> 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" proposed in the bill.

The memorandum suggests there may be scope for some exception to this general principle.<sup>47</sup> However, it acknowledged that this has not been "fully worked out in the case law". The memorandum notes that the ECtHR has "countenanced the possibility of an amnesty being compatible with article 2 in some particular circumstances, including where a reconciliation process is in existence".<sup>48</sup>

The memorandum concludes that the package of measures in the bill relating to immunity, criminal investigations, inquests and other legal proceedings is compatible with article 2, when taken together with the ICIR's powers to investigate deaths and other harmful conduct.<sup>49</sup> It argues:

The package which is directed at seeking information recovery to address outstanding concerns about past events, supported by reconciliation measures, is very different to the types of amnesties which have been found by the ECtHR to fall foul of article 2.<sup>50</sup>

The memorandum puts forward a series of propositions to support this position, arguing:<sup>51</sup>

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<sup>46</sup> Northern Ireland Office, '[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill: European Convention on Human Rights memorandum](#)', 16 May 2022, p 11.

<sup>47</sup> Northern Ireland Office, '[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill: European Convention on Human Rights memorandum](#)', 16 May 2022, p 11.

<sup>48</sup> Northern Ireland Office, '[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill: European Convention on Human Rights memorandum](#)', 16 May 2022, p 12.

<sup>49</sup> Northern Ireland Office, '[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill: European Convention on Human Rights memorandum](#)', 16 May 2022, p 14.

<sup>50</sup> Northern Ireland Office, '[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill: European Convention on Human Rights memorandum](#)', 16 May 2022, p 14.

<sup>51</sup> Northern Ireland Office, '[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill: European Convention on Human Rights memorandum](#)', 16 May 2022, pp 14–15.

- 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.
- These proposals are not a one-sided measure which benefit only state agents.
- For the ICIR to conduct successful information recovery investigations, which will in turn significantly aid reconciliation in the long term, it is essential for the possibility of a prosecution outcome to be restricted to those who fail to participate effectively in the truth recovery process.
- A coherent statutory scheme involving prohibitions and restrictions on legal proceedings, a conditional immunity scheme and a new framework for investigations will create a structure based on the rule of law for investigating and resolving these historic issues.
- Previous and current methods of investigating events arising from the Troubles have been dogged with controversy and allegations of state bias.

The ECHR memorandum also considers the extent to which the bill engages 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).

### **3. House of Commons stages**

#### **3.1 Second reading**

Opening the second reading debate on 24 May 2022, the then secretary of state for Northern Ireland, Brandon Lewis, explained why the government was introducing legislation on legacy issues:

The current system is broken. It is delivering neither justice nor information to the vast majority of families. The lengthy, adversarial and

complex legal processes do not offer the most effective route to information recovery, nor do they foster understanding, acknowledgment or reconciliation [...] We need to be honest about the limitations of focusing on criminal justice as a means to secure truth and accountability in relation to what happened to those who were killed or injured.<sup>52</sup>

Mr Lewis argued the bill marked a “definitive shift in focus”. He said it had “information recovery for families at its core” because the prospect of successful prosecutions was “vanishingly small”.<sup>53</sup> Mr Lewis stated that it also delivered on a manifesto commitment to members of the armed forces, security services and the Royal Ulster Constabulary by providing them with “the certainty they [...] deserve”.

Mr Lewis stated the government had consulted widely with stakeholders since the publication of the command paper in July 2021.

Speaking on the specifics of the bill, Mr Lewis stated:<sup>54</sup>

- **The independent commission for information recovery** would be tasked with “carrying out robust, effective and thorough investigations” into the deaths and injuries that occurred during the Troubles for the “primary purpose of information recovery”. It would be demand-led in order to respect some families who “do not want to revisit the past”. However, the secretary of state would be able to request a review to ensure the government fulfilled its obligations under the ECHR. Mr Lewis highlighted that for the “first time by legal requirement” the UK government, security services and arm’s length bodies would have to comply with “full disclosure” of information.
- **The model for immunity from prosecution** would be “conditional”. Individuals would be required to acknowledge their

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<sup>52</sup> [HC Hansard, 24 May 2022, cols 175–6.](#)

<sup>53</sup> [HC Hansard, 24 May 2022, col 177.](#)

<sup>54</sup> [HC Hansard, 24 May 2022, cols 177–85.](#)

involvement in serious troubles-related incidents and “reveal what they know”. Mr Lewis stated the government had moved away from the unconditional statute of limitations model as set out in the 2021 command paper because many individuals and organisations had said it was “just too painful to accept”.

- **Future prosecutions** would “remain a possibility” if those involved in offences connected to a death or serious injury “do not actively come forward”. Mr Lewis explained that no other organisation in the UK apart from the recovery commission would be able to “take forward a criminal investigation into a Troubles-related incident”.
- **Active criminal, civil, inquest and police complaints systems** would be able to continue subject to the provisions in part 3 of the bill. Any existing cases in which there had been a decision taken to prosecute would “be allowed to continue to their conclusion”. Mr Lewis said following consideration of the responses to the command paper, the government “no longer propose[s] to bring [active civil claims and inquests] to an immediate end”. Civil claims already filed with the courts before the bill was introduced would be “allowed to continue” but new cases would be “barred”. Inquests that had reached an “advanced stage by 1 May next year, or on the date on which the new commission becomes operational”, would continue. New and existing inquests that had not reached an advanced stage could be referred to the commission for investigation.
- **A new oral history initiative** would be launched and would be one of the “most ambitious and comprehensive approaches to oral history”. Mr Lewis stated that “consistent” with the Stormont House agreement, the provisions would “create opportunities for people from all backgrounds”.

Speaking for the Opposition, Shadow Secretary of State for Northern Ireland Peter Kyle stated the Labour Party would be voting against the bill. Mr Kyle said that “regrettably the bill jettisons” the approach taken in the Stormont agreement.<sup>55</sup> He argued the bill did not “provide victims’ families

<sup>55</sup> [HC Hansard, 24 May 2022, cols 187–8.](#)

with a process they can trust”.

Mr Kyle raised a series of concerns about the legislation. He argued:<sup>56</sup>

- The bar for immunity was “set so low” that it was hard to see prosecutions happening in the future, and that it was “offensive” to victims’ families.
- Investigatory work should be “leading the process” of the new commission. Mr Kyle expressed concern that the language of the bill focused on the commission’s power to review cases rather than to investigate them. He sought further information about how the independent commission would exercise the police powers given to it under the provisions of the bill.
- The bill failed to provide a “fair and balanced system” for veterans that “recognises their service, addresses reinvestigations and provides welfare support”. Mr Kyle suggested the bill provided “more benefits to terrorists than veterans or victims”, which was “not fair to anyone”.
- The bill did not prohibit anyone who had committed or covered up acts of sexual violence from seeking immunity.
- There were questions around whether it was compatible with the ECHR.
- There had been a lack of consultation and pre-legislative scrutiny. Mr Kyle stated there had been a “staggering lack of consultation” with victims’ groups, bodies such as the Northern Ireland Human Rights Commission (NIHRC), PSNI and judiciary, the Irish government, and political parties in Northern Ireland. Mr Kyle argued “rushing” these proposals before Parliament had “already damaged the reconciliation”.

Speaking later in the debate, Shadow Minister for Northern Ireland Tonia Antoniazzi raised concerns about the “sweeping powers” the bill gave the secretary of state, including those to appoint people to the commission and

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<sup>56</sup> [HC Hansard, 24 May 2022, cols 187–95.](#)

over the process of granting immunity.<sup>57</sup> Ms Antoniazzi highlighted that when considering immunity requests, the panel “must” take account of guidance from the secretary of state. She argued the word “must” was doing a “lot of heavy lifting”.

Several of these issues were raised by other members from various parties. For instance, Chair of the House of Commons Northern Ireland Affairs Committee Simon Hoare (Conservative), and a former secretary of state for Northern Ireland, Julian Smith (Conservative MP for Skipton and Ripon), questioned whether the proposals were fully compliant with article 2 of the ECHR, the right to life.<sup>58</sup> Mr Smith urged the government to “look again” at the independence and investigatory powers of the commission to ensure it could conduct a legally compliant investigation.<sup>59</sup>

Simon Hoare also wanted changes to the way members of the commission were appointed.<sup>60</sup> He wanted Parliament to have a vote affirming appointments, a seat reserved for an international participant, and an oversight panel which included groups representing victims and the veteran’s commissioner. Mr Hoare said that while the bill was not perfect and needed some amendment, “there was potential for something for everybody who has a legitimate interest”.

However, Mr Hoare did express criticism about the lack of time for parliamentary scrutiny.<sup>61</sup> He argued that more time would “give comfort” to those people who wanted to make sure the solution was “properly scrutinised”. This view was supported by Richard Thomson (SNP MP for Gordon) who stated the parliamentary time allocated was “thoroughly inadequate” and did “not pay the respect” due to victims’ groups and other stakeholders across the island of Ireland, and to veterans’ communities.<sup>62</sup>

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<sup>57</sup> [HC Hansard, 24 May 2022, col 249.](#)

<sup>58</sup> [HC Hansard, 24 May 2022, cols 195 and 203.](#)

<sup>59</sup> [HC Hansard, 24 May 2022, col 203.](#)

<sup>60</sup> [HC Hansard, 24 May 2022, cols 196–7.](#)

<sup>61</sup> [HC Hansard, 24 May 2022, col 196.](#)

<sup>62</sup> [HC Hansard, 24 May 2022, col 200.](#)

Alistair Carmichael (Liberal Democrat MP for Orkney and Shetland) questioned what the government “hope[d] to achieve” by introducing legislation which did not have consensus.<sup>63</sup>

Johnny Mercer (Conservative MP for Plymouth, Moor View)<sup>64</sup> acknowledged the bill “need[ed] work” but urged colleagues to “get it through”.<sup>65</sup> He argued:

[...] we have to do what we can to bring some sort of end, finality and truth to this process for the victims. That is what I want colleagues to focus on.<sup>66</sup>

Several MPs from the three political parties in Northern Ireland with members that sit in the House of Commons expressed some common concerns. These included: the lack of support and consensus on the bill’s proposals from stakeholders in Northern Ireland and the Irish government; the departure from the approach taken in the Stormont House agreement; compliance with article 2 of the ECHR; and the limited parliamentary time for scrutiny.

For instance, Social Democratic and Labour Party (SDLP) leader Colum Eastwood (SDLP MP for Foyle) stated:

I am sitting with colleagues from Northern Ireland around me, and while we rarely agree on much—I think they will agree with that—we agree on this. [...] this piece of legislation goes absolutely against the wishes of the people of Northern Ireland and against the interests of the victims in Northern Ireland.

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<sup>63</sup> [HC Hansard, 24 May 2022, col 177.](#)

<sup>64</sup> At the time of the Commons second reading debate Mr Mercer was not a government minister, although he had held the post of minister for defence people and veterans between 28 July 2019 and 20 April 2021. Between 7 July 2022 and 6 September 2022 Mr Mercer was minister for veterans’ affairs. He was reappointed to the post on 25 October 2022.

<sup>65</sup> [HC Hansard, 24 May 2022, col 218.](#)

<sup>66</sup> [HC Hansard, 24 May 2022, col 215.](#)

[...]

We have already agreed how to resolve this issue: it is called the Stormont House agreement.<sup>67</sup>

Speaking on behalf of the Democratic Unionist Party (DUP), Gavin Robinson (DUP MP for Belfast East) concurred, stating “we all agree in Northern Ireland that this bill is wrong” and would “not command support”.<sup>68</sup> Stephen Farry (Alliance MP for North Down) said the law would be “unworkable” in Northern Ireland.<sup>69</sup> Mr Farry argued it was incompatible with the “principles of justice, the rule of law and reconciliation, and it is not compatible with international human rights standards either”. He said that the Stormont House agreement had “never even been given a chance”. He argued the bill was not consistent with the agreement’s principles and was a “breach” of the ‘New decade, new approach’ deal.

Gavin Robinson also raised concerns about the changes schedule 11 of the bill would make to existing legislation concerning the early release of prisoners and maximum jail sentences.<sup>70</sup> He argued reducing offenders’ “time in jail to nothing” would remove the incentive for people to engage with the commission. He suggested that offenders would not serve time in jail whether they engaged with the process or not. This issue was addressed by other members, including Iain Duncan Smith (Conservative MP for Chingford and Woodford Green) who argued:

My point is that if we are going to open the door on the one hand to those who would entertain the possibility of coming to speak the truth, we must also say that those who do not will face the full penalty of the law for murder most foul: “You will not be given an exemption. You will not end up with only two years. You will face a full prosecution if you

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<sup>67</sup> [HC Hansard, 24 May 2022, cols 218–19.](#)

<sup>68</sup> [HC Hansard, 24 May 2022, col 211.](#)

<sup>69</sup> [HC Hansard, 24 May 2022, cols 228–9.](#)

<sup>70</sup> [HC Hansard, 24 May 2022, col 212.](#)



are not part of this process”.<sup>71</sup>

The bill passed second reading on division by 285 votes to 208.<sup>72</sup> A programme motion was agreed to without debate at the conclusion of the second reading debate.

### **3.2 Committee and report stage**

The bill was committed to a committee of the whole House. Proceedings took place over two days: 29 June and 4 July 2022. Report stage took place immediately after the second day of committee proceedings, on 4 July 2022.

The only amendments made to the bill related to excluding sexual offences from within the scope of the immunity from prosecution provisions.

However, debate also took place on amendments concerning the conditions for granting immunity; the ending of civil cases and inquests; offenders profiting from immunity; and glorification of terrorism. Members also reiterated concerns expressed at second reading about sentencing rules for those prosecuted and whether the provisions of the bill were compliant with the ECHR.

#### **3.2.1 Immunity and sexual offences**

At committee stage, the Opposition tabled amendment 115 and new schedule 1. Their purpose was to exclude sexual offences from the scope of the immunity provisions in the bill. Speaking to the amendment and the new schedule, Peter Kyle said:

On second reading, I raised the warnings from experts that the bill would allow immunity to be granted to rapists and other sexual

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<sup>71</sup> [HC Hansard, 24 May 2022, col 223.](#)

<sup>72</sup> [HC Hansard, 24 May 2022, cols 258–60.](#)

offenders. During the debate, ministers insisted that that was not the case. Since then, we have had months of select committee evidence hearings where multiple witnesses confirmed that the bill would allow immunity to be granted to perpetrators of sexual offences committed as part of the Troubles.<sup>73</sup>

Mr Kyle argued the provision needed to be put in statute.

Simon Hoare, speaking in support of the proposals, said amendment 115 was “unarguable”.<sup>74</sup> Mr Hoare pointed to the “firm belief” that sexual intimidation, sexual violence, and rape were used as a “tool of intimidation and criminality during the Troubles”. He argued that for the “sake of clarity and the peace of mind of those who are concerned about this issue”, changes should be made to the bill to exclude sexual violence offences from the immunity clauses.

The then minister of state for Northern Ireland Conor Burns argued that while the government’s view was that sexual offences would be outside the scope of the bill, it was “listening” and would bring “greater clarity” if that was needed.<sup>75</sup> Subsequently during the proceedings, Mr Burns announced the government had:

[...] heard loud and clear the mood of the committee and its wish to see greater clarity in the bill. With that intent clear, and our recognition of the mood of the committee on that, we are willing to accept the amendment on the condition that we will work over the coming days to see if we can find a refined wording that we can bring back to the House on report.<sup>76</sup>

Amendment 115 and new schedule 1 were agreed to at committee without

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<sup>73</sup> [HC Hansard, 29 June 2022, col 367.](#)

<sup>74</sup> [HC Hansard, 29 June 2022, col 346.](#)

<sup>75</sup> [HC Hansard, 29 June 2022, col 346.](#)

<sup>76</sup> [HC Hansard, 29 June 2022, cols 404–5.](#)

a vote.<sup>77</sup>

At report stage the government introduced new clause 1 and a series of consequential amendments which provided that immunity from prosecution could not be granted for sexual offences.<sup>78</sup> They replaced the Opposition amendments made at committee, amendment 115 and new schedule 1.

### **3.2.2 Conditions for granting immunity**

At committee stage the DUP moved amendment 98, which would have added new conditions for granting immunity, and amendment 97 and new clause 5, which were intended to reduce the likelihood of people lying to the commission. All were negated on division.

Amendment 98 was intended to prevent the grant of immunity to any person subject to active proceedings who had moved abroad to escape prosecution. It was voted on and negated by 271 votes to 175 votes.<sup>79</sup>

Amendment 97 would have required the commission to submit a prosecution file to the Public Prosecution Service if someone had been found to have lied to the panel. The DUP stated the amendment was intended to reduce the risk of claimants deliberately misleading the panel. Amendment 97 was defeated by 271 votes to 191 votes.<sup>80</sup>

New clause 5 would have provided for someone's immunity to be revoked if they were found to have lied to the immunity request panel. Gavin Robinson said there would be a "crisis of confidence" if there was no way to revoke the immunity of someone who had lied.<sup>81</sup> However, responding for the government, Mr Burns stated that the panel would be led by an experienced

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<sup>77</sup> [HC Hansard, 29 June 2022, col 419.](#)

<sup>78</sup> [HC Hansard, 4 July 2022, cols 682–3.](#)

<sup>79</sup> [HC Hansard, 4 July 2022, cols 412–15.](#)

<sup>80</sup> [HC Hansard, 4 July 2022, cols 409–11.](#)

<sup>81</sup> [HC Hansard, 4 July 2022, col 634.](#)

judicial-style figure and team of expert investigators. He said it was “highly improbable” that someone could come with a false account.<sup>82</sup> New clause 5 was defeated by 282 votes to 218.<sup>83</sup>

### 3.2.3 Criminal prosecutions, civil claims and inquests

Many members across the House expressed concern about the provisions in clause 39 that would put an end to inquests except in circumstances specified in the bill.

The Opposition moved amendment 116 at committee. The amendment would have removed the provisions in the bill which inserted into the Coroners Act (Northern Ireland) 1959 requirements to close existing Troubles-related inquests in Northern Ireland. Peter Kyle argued that there were not many Troubles-related inquest cases that would be affected by the provisions and questioned the “justification for ending” them.<sup>84</sup> Mr Kyle highlighted that the cases had not been separated on merit and therefore it was “cruel” to allow some of the cases to continue but close others based on the order in which they were due to proceed. Speaking in support of the amendment, Stephen Farry said that ending some inquests that are not at “a so-called advanced stage” would “create a real sense of grievance among families”.<sup>85</sup>

In response, Conor Burns explained that existing inquests could be rolled into the new body. Mr Burns said the government’s view was the new body would have more powers and would be able to conduct reviews faster.<sup>86</sup> He stated the government wanted a single body that dealt with all cases. He explained that would mean “that at some point there must be a date on which we stop other processes and roll everything into this one body”.

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<sup>82</sup> [HC Hansard, 4 July 2022, col 642.](#)

<sup>83</sup> [HC Hansard, 4 July 2022, cols 674–6.](#)

<sup>84</sup> [HC Hansard, 4 July 2022, col 626.](#)

<sup>85</sup> [HC Hansard, 4 July 2022, col 646.](#)

<sup>86</sup> [HC Hansard, 4 July 2022, col 615.](#)

Amendment 116 was defeated by 283 votes to 211.<sup>87</sup> Clause 39 was also divided upon and was agreed to by 282 votes to 211 votes.<sup>88</sup>

During the debate on amendment 116 and clause 39 members also expressed concerns about part 3 of the bill as a whole, including the provisions that would end civil claims and criminal prosecutions.

For instance, Gavin Robinson said that the decision to end criminal investigations has caused “huge concern” among families that were involved with Operation Kenova and the “more than 30 live files” with the NI PPS.<sup>89</sup> Colum Eastwood stated it was “egregious” the government was “seeking to close down the civil route for victims”.<sup>90</sup> Mr Eastwood criticised the deadline set out in the bill for putting in new civil cases. Stephen Farry also said the “arbitrary cut-off” was “incredibly unjust”.<sup>91</sup>

However, Mr Burns argued that the bill did not prevent criminal investigations being initiated or continued by the independent commission, and in relation to civil cases, Mr Burns said the government wanted to:

[...] deliver a system that focuses on effective information recovery and reconciliation measures, getting as much information to as many families as possible.<sup>92</sup>

### 3.2.4. Profiting from immunity

The Labour Party tabled amendment 114 and new clause 2 at committee stage. The amendments were intended to prevent a person granted immunity under the bill from profiting from the conduct for which they

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<sup>87</sup> [HC Hansard, 4 July 2022, cols 666–9.](#)

<sup>88</sup> [HC Hansard, 4 July 2022, cols 670–2.](#)

<sup>89</sup> [HC Hansard, 4 July 2022, col 615.](#)

<sup>90</sup> [HC Hansard, 4 July 2022, col 633.](#)

<sup>91</sup> [HC Hansard, 4 July 2022, col 645.](#)

<sup>92</sup> [HC Hansard, 4 July 2022, col 615.](#)

were granted immunity. Explaining the purpose of the amendment 114, Peter Kyle stated:

Our amendment 114 is based on exploitation proceeds orders from the Coroners and Justice Act 2009, which stop criminals in our country profiting from their crimes, usually through books or memoirs. Our amendment would allow the secretary of state to make regulations to ensure that people given immunity cannot then profit from the actions that they have just admitted to.<sup>93</sup>

My Kyle said the intent behind the amendment was to ensure the bill offered “greater benefits to victims than it does to perpetrators of terror”.<sup>94</sup>

Amendment 114 was moved and was defeated by 282 votes to 209.<sup>95</sup>

### 3.2.5 Glorification of terrorism

At committee, the DUP moved new clause 4 which would have made receiving immunity under this bill an aggravating factor in sentencing for the offence of glorifying terrorism. Explaining the purpose of the clause, Gavin Robinson explained:

New clause 4 deals with those who are granted immunity and then go on to glorify terrorism. We accept that section 1 of the Terrorism Act 2006 provides an offence of glorification of terrorism, but that is not what the amendment proposes. The amendment not only replicates section 1 but indicates that, if someone had previously benefited from immunity through the ICRIR process, new clause 4 would make it an aggravating feature if they had immunity and then ultimately glorified terror.<sup>96</sup>

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<sup>93</sup> [HC Hansard, 4 July 2022, cols 624–5.](#)

<sup>94</sup> [HC Hansard, 4 July 2022, col 625.](#)

<sup>95</sup> [HC Hansard, 4 July 2022, cols 662–5.](#)

<sup>96</sup> [HC Hansard, 4 July 2022, col 643.](#)

Conor Burns said that the government's view was that the Terrorism Act 2006 already made it illegal for the encouragement or glorification of terrorism. Mr Burns stated:

Nothing in this Bill will prevent the prosecution of individuals deemed to have committed an offence under the 2006 Act, and it is incorrect to say that an individual gaining immunity through this body for a specific Troubles-related event would then have immunity if they went on to commit a separate offence under the 2006 Act.<sup>97</sup>

The clause was voted on and defeated by 283 votes to 220 votes.<sup>98</sup>

### 3.2.6 Sentencing

Concerns were expressed by a number of members about schedule 11 of the bill which would remove the requirement for prisoners convicted of certain offences to serve a minimum sentence before release. Members suggested one consequence would be that it removed the incentive for people to engage with the independent commission. James Sutherland (Conservative MP for Bracknell) said the provision “virtually removes any incentive for a perpetrator to engage with the process”.<sup>99</sup> Gavin Robinson said the “maximum consequence” for lying to the commission or for not engaging with it at all would be “zero time in jail”.<sup>100</sup> Iain Duncan Smith asked the government if it would:

[...] move to a position whereby those who play no part in the process, and those who are proven to have lied deliberately, lay themselves open to the normal criminal justice process and a full-life tariff for heinous crimes?<sup>101</sup>

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<sup>97</sup> [HC Hansard, 4 July 2022, col 660.](#)

<sup>98</sup> [HC Hansard, 4 July 2022, cols 679–81.](#)

<sup>99</sup> [HC Hansard, 29 June 2022, col 377.](#)

<sup>100</sup> [HC Hansard, 4 July 2022, col 642.](#)

<sup>101</sup> [HC Hansard, 29 June 2022, col 343.](#)

In response, Conor Burns said the government was listening to the arguments for fines for non-engagement, and to the concerns about sentencing. He said there were “active conversations” internally about the issues.<sup>102</sup> Mr Burns gave the House an undertaking to look at the issue further.<sup>103</sup>

### **3.2.7 Compatibility with article 2 of the European Convention on Human Rights**

Questions were raised about whether the provisions of the bill were compatible with article 2 of the ECHR.<sup>104</sup> At committee stage the DUP tabled new clause 7, which would have made all bodies or offices created under the bill subject to civil action and judicial reviews on the grounds of incompatibility with article 2 of the ECHR. Speaking in support of the clause, Richard Thomson (SNP MP for Gordon) said the SNP backed “enshrining in the bill the explicit right” for individuals to take civil action.<sup>105</sup>

Responding to the concerns expressed, Conor Burns stated:

The bill does not prohibit investigations into those troubles-related incidents that might engage the UK’s obligations under the ECHR. We have included various measures to ensure that the body is equipped with the necessary powers to secure information and conduct through article 2-compliant investigations. We are confident that these measures fulfil our article 2 obligations. Individuals who wish to challenge a decision taken by ICRIR will be able to do so by means of a judicial review.<sup>106</sup>

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<sup>102</sup> [HC Hansard, 4 July 2022, col 623.](#)

<sup>103</sup> [HC Hansard, 4 July 2022, col 660.](#)

<sup>104</sup> [HC Hansard, 29 June 2022, col 396.](#)

<sup>105</sup> [HC Hansard, 4 July 2022, col 633.](#)

<sup>106</sup> [HC Hansard, 4 July 2022, col 659.](#)



### 3.3 Third reading

Third reading took place immediately after report stage, on 4 July 2022.<sup>107</sup>

Opening the debate, the then secretary of state for Northern Ireland Brandon Lewis stated the bill would help families of victims and the survivors of the Troubles to “get the answers they desperately seek”.<sup>108</sup> Mr Lewis said the bill would also fulfil the government’s manifesto commitment to the veterans of the armed forces “who served with such honour” in Northern Ireland.

Turning to the powers of the independent information recovery commission, Mr Lewis stated it would be capable of carrying out “robust and effective investigations”.<sup>109</sup> He confirmed that those “whose do not engage will remain indefinitely liable to prosecution”.

Mr Lewis acknowledged that it was a “difficult, complicated issue” that was “still painful for so many”.<sup>110</sup> He said the government remained “open to constructive dialogue with all stakeholders”. Mr Lewis highlighted the changes made to the bill to ensure that immunity could not be granted to those who had committed Troubles-related sexual offences. He said the government would continue to talk to the Opposition and the Northern Ireland parties as they prepared to introduce it into the House of Lords.

Responding for the Opposition, Peter Kyle said that bill did not have support from the relevant parties and “fail[ed] stakeholders so comprehensively”.<sup>111</sup> He argued the bill lacked support from all of the Northern Ireland political parties, victims groups in Northern Ireland and the Northern Ireland Human Rights Commission.

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<sup>107</sup> [HC Hansard, 4 July 2022, cols 683–88.](#)

<sup>108</sup> [HC Hansard, 4 July 2022, col 683.](#)

<sup>109</sup> [HC Hansard, 4 July 2022, col 683.](#)

<sup>110</sup> [HC Hansard, 4 July 2022, col 684.](#)

<sup>111</sup> [HC Hansard, 4 July 2022, col 684.](#)

Mr Kyle reiterated that the Opposition could not support the bill as it stood. He said immunity was “too easy to earn” and was “set above” investigations.<sup>112</sup> He argued that investigations had been “downgraded to review”, and “most fundamentally”, the bill gave more rights to the offenders of Troubles-related crimes than it did to the victims.

The leader of the DUP, Sir Jeffrey Donaldson (DUP MP for Lagan Valley), thanked the government ministers for “reaching out” to victims’ and survivors’ groups.<sup>113</sup> However, he said those groups had sent a “clear message” that the bill was not consistent with their “desire to pursue not just truth and information, but justice”. He argued the bill “fundamentally falls down when it comes to justice”. Sir Jeffrey said his party wanted to move forward with reconciliation. However, he felt that the proposals in the bill would make it more difficult for many to “achieve the healing they need to move towards the reconciliation we desire for our society”.<sup>114</sup> He said that the DUP would be voting against the bill at third reading.

Colum Eastwood agreed that the bill would not bring about reconciliation. He said:

If anybody really believes that this legislation will bring about truth or reconciliation, they are lying to themselves and to the victims out there, who are deeply, deeply disappointed and dismayed today. I will absolutely vote against third reading.<sup>115</sup>

Stephen Farry expressed concern that the process would not be used by either “victims or perpetrators”.<sup>116</sup> Mr Farry said it would instead make the process of reconciliation harder. He argued the existing structures while piecemeal, were working.

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<sup>112</sup> [HC Hansard, 4 July 2022, col 684.](#)

<sup>113</sup> [HC Hansard, 4 July 2022, col 685.](#)

<sup>114</sup> [HC Hansard, 4 July 2022, col 686.](#)

<sup>115</sup> [HC Hansard, 4 July 2022, col 687.](#)

<sup>116</sup> [HC Hansard, 4 July 2022, col 687.](#)

The bill received a third reading on division by 282 votes to 217.<sup>117</sup>

#### 4. Parliamentary committee scrutiny of the bill

Several committees at the Westminster parliament have examined the bill and raised concerns about its compliance with the ECHR, the lack of support for the bill's provisions from key stakeholders, and about the powers it would give to the secretary of state.

##### 4.1 Joint Committee on Human Rights (JCHR)

The JCHR published its report on the bill on 26 October 2022 and concluded that its provisions were unlikely to comply with the ECHR.<sup>118</sup>

The committee found:<sup>119</sup>

- The bill's approach risked failing to meet the minimum standards required under the ECHR to ensure effective investigations into Troubles-related deaths and serious injury.
- The scope of the reviews was too narrow and may exclude investigations into cases involving violations of the prohibition of torture. The committee said that limiting ICRIR reviews to cases that related to deaths or one of a list of "narrowly defined" medical conditions deemed to have caused serious harm was likely to be in breach of the ECHR.
- "Shutting down all other avenues to pursue truth and justice" placed the UK at risk of non-compliance with article 6 (right of access to a court) and article 13 (right to an effective remedy). The

<sup>117</sup> [HC Hansard, 4 July 2022, cols 688–91.](#)

<sup>118</sup> Joint Committee on Human Rights, '[Legislative scrutiny: Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#)', 26 October 2022, HL Paper 79 of session 2022–23, p 3.

<sup>119</sup> Joint Committee on Human Rights, '[Legislative scrutiny: Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#)', 26 October 2022, HL Paper 79 of session 2022–23, pp 3–4; and Joint Committee on Human Rights, '[Northern Ireland Troubles Bill risks widespread breaches of human rights law](#)', 26 October 2022.

committee advocated criminal investigations, prosecutions and inquests continue and a longer limitation period for civil claims.

- The immunity scheme was in direct conflict with the duty to undertake effective investigations. The committee warned that amnesties for “grave violations of human rights are not permissible” under the ECHR. It called for the scheme to be removed. However, if the provisions were retained, the committee said a higher bar must be established for immunity, and revocation should be possible in circumstances where a false account had been given.
- The extension of the early release scheme and the removal of the need to serve any prison time for serious criminal conduct could be in violation of the convention.

The committee recognised the bill sought to “address a complex situation with no easy solutions”. However, it called on the government to reconsider its approach and put forward an ECHR-compliant solution. Chair of the committee, Joanna Cherry, stated:

We agree with many other stakeholders that this bill as drafted is unlikely to comply with the European Convention on Human Rights (ECHR). While we support the aim of reconciliation, we urge the Government to reconsider its whole approach. It’s crucial that the legislation ensures that: investigations are independent, effective, timely, involve next of kin, and are subject to public scrutiny. Perpetrators of serious human rights violations should be able to be held to account. All possible avenues for the pursuit of justice and the provision of an effective remedy should be available to victims and their families.<sup>120</sup>

## 4.2 House of Lords Constitution Committee

The Constitution Committee published its report on the bill on 14 October

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<sup>120</sup> Joint Committee on Human Rights, [‘Northern Ireland Troubles Bill risks widespread breaches of human rights law’](#), 26 October 2022.

2022.<sup>121</sup> The committee highlighted issues about the bill's compliance with the ECHR and raised concerns about the lack of support for the bill from key stakeholders and about some of the powers it would give to the secretary of state.

The committee argued there was a “clear lack of consent” from the main political parties in Northern Ireland, the wider Northern Irish society and from victims.<sup>122</sup> It stated the “strength of opposition” risked undermining the bill's aims of “addressing the past and promoting reconciliation”. The committee cautioned that it would be “constitutionally inappropriate for such a significant measure” to be passed without the Northern Assembly's legislative consent.

The committee also highlighted concerns about the regulation-making powers given to the secretary of state under the provisions of the bill:<sup>123</sup>

- The committee said there was no “compelling justification” for the power under clause 19 for the secretary of state to make provisions about the meaning of “sexual offences”, including the power to specify offences included in the definition. The regulations would be subject to the negative procedure and therefore would not require approval from Parliament. The committee argued that if “sexual offence” needed further definition it should be done by amendment to the bill. It stated that if the provision was kept in the bill, the regulation-making power should be made subject to the affirmative procedure. This means any regulations would require approval from both Houses of Parliament.
- The committee argued the power in clause 21 gave the secretary of state “wide discretion” to give guidance about the potential criminal liability of a person “without parliamentary oversight”. It stated the

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<sup>121</sup> House of Lords Constitution Committee, '[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#)', 14 October 2022, HL Paper 70 of session 2022–23.

<sup>122</sup> House of Lords Constitution Committee, '[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#)', 14 October 2022, HL Paper 70 of session 2022–23, pp 2–4.

<sup>123</sup> House of Lords Constitution Committee, '[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#)', 14 October 2022, HL Paper 70 of session 2022–23, pp 4–5.

requirement to take account of the secretary of state’s guidance could have a “chilling effect” on the ICIR and “undermine its independence”.

- The committee argued the power under clause 29 gave “wide discretion” to the secretary of state to guide the ICIR towards inaction because of risks to national security. The committee argued there would be “no independent review of the national security claims being made”. It recommended the House of Lords considered the “breadth of this power”.
- The committee stated the power under clause 20 for the secretary of state to make regulations on the holding and handling of information by the ICIR would allow the creation of criminal offences through delegated legislation. The committee stated it was “constitutionally unacceptable” to create criminal offences in this way.

The committee also suggested that considering the bill’s potential non-compliance with the ECHR and the risk of it undermining the rule of law, the House of Lords would wish to consider the bill’s implications for the UK’s international obligations.<sup>124</sup>

### **4.3 House of Lords Delegated Powers and Regulatory Reform Committee**

In its report published on 19 July 2022, the House of Lords Delegated Powers and Regulatory Reform Committee also raised concerns about the powers given to the secretary of state under clauses 19 and 21.<sup>125</sup>

It argued that the power given to the secretary of state under clause 19 was “inappropriate” and should be removed from the bill. It stated there was “no reason” why the bill should not include an “exhaustive definition” of

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<sup>124</sup> House of Lords Constitution Committee, ‘[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#)’, 14 October 2022, HL Paper 70 of session 2022–23, p 2.

<sup>125</sup> House of Lords Delegated Powers and Regulatory Reform Committee ‘[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#)’, 19 July 2022, HL Paper 55 of session 2022–23.

relevant sexual offences.<sup>126</sup> The committee criticised the proposal that regulations made under this clause would be subject to the negative procedure. Regarding clause 21, it said the statutory guidance should be subject to a parliamentary procedure, whether the affirmative or the negative.

The committee also stated that the power under clause 33 that would allow ministers to wind up the ICRIR by affirmative regulations should be removed.<sup>127</sup> It argued that “what Parliament has created should be for Parliament to abolish.”

## 5. Reaction to the bill

### 5.1 Veterans’ and police groups

The bill’s proposals have largely been welcomed by the veterans’ groups.<sup>128</sup> The Northern Ireland Veterans Movement said it was “not what everybody wants but it is as close as we are going to get”.<sup>129</sup> It said the commission “would hold no fear” for soldiers and police officers. A spokesperson for the organisation said the bill “sounds like it does what we have been campaigning for the last number of years, and that is to stop the prosecutions”.

Chris Albiston, a member of the executive committee at the Northern Ireland Retired Police Officers Association, welcomed that the government had acknowledged the criminal justice system was “increasingly less able to deliver satisfactory outcomes for anybody under the present

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<sup>126</sup> House of Lords Delegated Powers and Regulatory Reform Committee ‘[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#)’, 19 July 2022, HL Paper 55 of session 2022–23, p 2.

<sup>127</sup> House of Lords Delegated Powers and Regulatory Reform Committee ‘[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#)’, 19 July 2022, HL Paper 55 of session 2022–23, p 3.

<sup>128</sup> House of Commons Library ‘[Northern Ireland Troubles \(Legacy and Reconciliation\) Bill 2022–2023](#)’, 20 May 2022, p 53.

<sup>129</sup> News Letter, ‘[‘Nothing to fear’ in new legacy bill for NI veterans: NIVM](#)’, 17 May 2022.

arrangements”.<sup>130</sup> He stated that making investigations, inquests, civil and criminal proceedings the responsibility of one body would be more “efficient”. However, he criticised the process for the reports of the chief commissioner on the findings of a review. He argued:

You cannot [...] turn around and say, “There is no evidence that justifies these papers going to the DPP, but I am just going to publish a report saying that the police were all involved in improper activity anyway”. That is not acceptable and never has been, and it has been going on for 20 years. We were looking for this legislation to put a stop to it.

Veterans Commissioner for Northern Ireland Danny Kinahan has also welcomed the bill. Mr Kinahan stated the bill looked like it would introduce “a fair and more balanced playing field”.<sup>131</sup> However, Mr Kinahan said the immunity provisions did not work for veterans. He argued that veterans wanted “to have their day in court”.

## 5.2 Victims’ groups

Commissioner for Victims and Survivors in Northern Ireland Ian Jeffers told the House of Commons Northern Ireland Affairs Committee that the bill “is so devoid of victims and survivors within it and their concerns is a real kick in the teeth to them”.<sup>132</sup> Mr Jeffers reported that victims and survivors had felt there had been no consultation prior to the bill’s introduction; instead it had been a “transfer of information”.<sup>133</sup>

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<sup>130</sup> House of Commons Northern Ireland Affairs Committee, [‘Oral evidence: Addressing the legacy of Northern Ireland’s past: The UK government’s new proposals’](#), 15 June 2022, Q458.

<sup>131</sup> House of Commons Northern Ireland Affairs Committee, [‘Oral evidence: Addressing the legacy of Northern Ireland’s past: The UK government’s new proposals’](#), 15 June 2022, Q459.

<sup>132</sup> House of Commons Northern Ireland Affairs Committee, [‘Oral evidence: Addressing the legacy of Northern Ireland’s past: The UK government’s new proposals’](#), 7 June 2022, Q443.

<sup>133</sup> House of Commons Northern Ireland Affairs Committee, [‘Oral evidence: Addressing the legacy of Northern Ireland’s past: The UK government’s new proposals’](#), 7 June 2022, Q 417.



Sandra Peake, chief executive of the victim's group Wave Trauma Centre, said families wanted to know that there was a "full process". Sandra Peake argued that the bill was "perpetrator friendly" and "perpetrator focused".<sup>134</sup>

### 5.3 Northern Ireland Human Rights Commission

Shortly after the bill was introduced, the NI HRC stated it believed the bill was "almost certainly fatally, flawed".<sup>135</sup> It argued that the bill would very likely breach article 2 of the ECHR.

Giving evidence to the House of Commons Northern Ireland Affairs Committee, the chief commissioner of the commission, Alyson Kilpatrick, criticised the lack of consultation.<sup>136</sup> She said a key concern was that the "investigations are being turned into reviews" and the reviews would be in "limited circumstances".<sup>137</sup> Alyson Kilpatrick said another concern was over the provisions on immunity. She said the proposals would prevent prosecutions which would be a "very substantial interference with the rule of law".

In regard to compliance with human rights law, Alyson Kilpatrick said the bill "was clearly in breach".<sup>138</sup> She stated:

I certainly cannot see a way in which this bill can be made compatible when taken as a whole.

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<sup>134</sup> House of Commons Northern Ireland Affairs Committee, '[Oral evidence: Addressing the legacy of Northern Ireland's past: The UK government's new proposals](#)', 7 June 2022, Q 418.

<sup>135</sup> Northern Ireland Human Rights Commission, '[NI Human Rights Commission responds to proposed legislation on dealing with the past](#)', 23 May 2022.

<sup>136</sup> House of Commons Northern Ireland Affairs Committee, '[Oral evidence: Addressing the legacy of Northern Ireland's past: The UK government's new proposals](#)', 7 June 2022, Q374.

<sup>137</sup> House of Commons Northern Ireland Affairs Committee, '[Oral evidence: Addressing the legacy of Northern Ireland's past: The UK government's new proposals](#)', 7 June 2022, Q375.

<sup>138</sup> House of Commons Northern Ireland Affairs Committee, '[Oral evidence: Addressing the legacy of Northern Ireland's past: The UK government's new proposals](#)', 7 June 2022, Q375.

Alyson Kilpatrick said it was for the government to show how it would be compliant. She said the commission disagreed with the government's analysis in its memorandum on human rights to the bill.<sup>139</sup>

## 5.4 Sinn Féin

Sinn Féin has echoed concerns expressed in Westminster by the Northern Ireland political parties. Sinn Féin's deputy vice president Michelle O'Neill has said the bill is another "slap in the face to victims who have campaigned for decades for truth and justice".<sup>140</sup> In a letter to the then secretary of state, Brandon Lewis, Ms O'Neill said the UK government was ignoring widespread concerns from all political parties, the Irish government and the Northern Ireland Human Rights Commissioner. She argued the government's decision to "fast-track" the legislation through Parliament "confirms that their objective is closing down any further independent scrutiny or investigation of the British state's role in the conflict". Ms O'Neill said the bill breached the Stormont House agreement and the New Deal, New Approach agreement.

## 5.5 Irish government

The Irish government has stated it has communicated a number of "significant concerns" to the UK government.<sup>141</sup> It said the bill needed to satisfy two fundamental tests: it meets the needs of the victims and families; and meets the requirements of the ECHR, which is an "essential element" of the GFA. The Irish government said it was "very difficult" to see the bill passing either test. The government stated the bill had caused "profound upset" and was opposed by all political parties in Northern Ireland.

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<sup>139</sup> House of Commons Northern Ireland Affairs Committee, '[Oral evidence: Addressing the legacy of Northern Ireland's past: The UK government's new proposals](#)', 7 June 2022, Q375.

<sup>140</sup> Sinn Féin, '[Legacy bill a 'slap in the face' to victims and families: O'Neill](#)', 29 June 2022.

<sup>141</sup> House of Commons Northern Affairs Committee, '[Correspondence from the ambassador of Ireland to the UK, relating to Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#)', 4 July 2022.

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