

Briefing from the Committee on the Administration of Justice on the Northern Ireland Troubles (Legacy and Reconciliation) Bill

House of Lords Report Stage, Government Amendments

June 2023

1. The Committee on the Administration of Justice ('CAJ') is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that Government complies with its obligations in international human rights law.
2. This briefing provides an assessment of the Government amendments proposed at House of Lords (HL) Report stage, which were finally published on the 8 June 2023.¹ References to the Bill refer to the Bill as brought to the HL from the House of Commons (HC).²
3. Responding to the Shadow Secretary of State's call for a 'total rethink on legacy' in light of the broad opposition to the Bill during Northern Ireland questions on the 10 May 2023, the Secretary of State for Northern Ireland announced that Government would be tabling 'game changing' amendments to the Legacy Bill 'over the next couple of weeks.'³
4. Significant amendments to the Bill have been repeatedly promised by ministers but have not transpired. Previous proposed Government amendments to the Bill have not adequately addressed the substantial concerns highlighted by UN and Council of Europe mandate holders regarding the Bill's compatibility with the ECHR and UN human rights treaties. In an intervention in January 2023 the UN High Commissioner for Human Rights, Volker Türk, called on the UK to reconsider the Bill on the grounds that it would obstruct the rights of victims to meaningful remedies. He was also critical of the last-minute publication of amendments to avoid meaningful scrutiny.⁴
5. It is notable that the Northern Ireland Office (NIO) ultimately did not publish the amendments until late on the evening on the 8 June 2023 (with a press statement).⁵ The evening timing may have been designed to limit the opportunity for journalists to source alternative viewpoints, from organisations such as CAJ and victims campaigners who are strongly critical of the amendments.⁶
6. It is also notable that the publication of the amendments occurred after the conclusion of a meeting of the Committee of Ministers (CM) of the Council of Europe assessing the Bill's compliance with human rights. This meeting would have provided a forum for scrutiny of the amendments and would no doubt have been criticised for failing to address any of the specific concerns raised regarding ECHR incompatibility of the Bill. Ultimately the Committee

¹ Link to amendments: <https://bills.parliament.uk/publications/51510/documents/3546>

² Bill as brought to HL from HC accessible [here](#). The bill was not amended at HL Committee Stage.

³ [HC Official Report, 10 May 2023, Volume 732, column 322.](#)

⁴ <https://www.ohchr.org/en/press-releases/2023/01/uk-rights-victims-and-survivors-should-be-centre-legislative-efforts-address>

⁵ <https://www.gov.uk/government/news/government-introduces-amendments-to-ni-troubles-legacy-legislation>

⁶ [Amendments to NI Legacy Bill criticised as 'smoke and mirrors' by campaigners – The Irish Times](#)

of Ministers adopted an Interim Resolution expressing serious concern that there had been no progress in addressing the Bill's incompatibility with the ECHR, singling out in particular the immunities scheme, the closure of inquests and weaknesses in the powers and independence of the ICIR.⁷

7. This briefing in summary highlights the following:

- **The Government Amendments to the Legacy Bill do not adequately address any of the areas of concern regarding ECHR incompatibility raised by UN and Council of Europe experts.** Some of the identified areas of concern are not addressed at all by amendments; others are engaged with but not in a manner that would allay the concerns raised; some amendments exacerbate concerns about ECHR compatibility.
- **The Bill will shut down existing legacy mechanisms at a time when such mechanisms are increasingly delivering for families. The Government amendments are designed to copper-fasten and extend this process.** Throughout the amendments there is a clear gap between what the Government claims to be doing and what the amendments will actually deliver. For example, contrary to claims that the timeframe for inquests is being extended, the framing of the amendments will in practice likely curtail more inquests and crucially will jeopardise some of those that have commenced. The amendments also place additional prohibitions on the ability of the Police Ombudsman to investigate Troubles-related offences and limit reports from criminal investigations even when completed. The government claims that the ICIR 'reviews' will deliver as much and more information as these mechanisms but in reality the ICIR lacks the powers to do so and is a much more limited mechanism.
- **Government amendments purporting to ensure that the ICIR can conduct ECHR compatible investigations will be ineffective, not least because the immunities scheme will still operate as a 'get out of investigation free card'.** One amendment will require the ICIR to consider whether reviews will include a criminal investigation (which could use police powers). This however does not address the fundamental problem that, once a suspect has secured immunity from the ICIR, the Commission will not be able to exercise its police powers and hence conduct an effective criminal investigation. Other Government amendments are ostensibly designed to incentivise individuals to apply for immunity thus placing more suspects beyond the reach of effective investigations. An amendment will abolish the Early Release Scheme, an outworking of the 1998 peace agreement, to this end. A further Government amendment provides that the ICIR will have to comply with obligations under the Human Rights Act (HRA) but the government simultaneously holds the position that there are no HRA obligations in most Troubles-related cases.
- **Government amendments to the immunities scheme are ancillary and mere window-dressing, with the conspicuously low threshold for immunity remaining intact.** An amendment requiring the ICIR to take steps to verify information does not alter the very low bar for immunity whereby an applicant only has to believe their account is true and does not have to give any new information at all to meet the criteria. Amendments providing for a revocation of immunity for false statements or when a person is convicted of a fresh terrorist offence will have a limited impact. This is not least as even if immunity is revoked for a Troubles related offence the police will still be prohibited from investigating it due to the effects of the Bill.
- **Government amendments do not address the Council of Europe's concerns regarding the independence of the ICIR with particular reference to the role Secretary of State.**

⁷ [Interim Resolution CM/ResDH\(2023\)148 June 2023](#)

Powers to make all the ICRIR appointments, set the budget, close the ICRIR down at any point, extensively shape its caseload, redact the content of ICRIR reports with a broadly drafted 'national security +' veto, and to solely provide all oversight of the ICRIR remain intact. Amendments would only transfer one function from the Secretary of State to the ICRIR, namely the power to issue Guidance on the immunities process, which will in itself not be able to amend the low threshold for immunity set out in the Bill.

- Government **amendments relating to memorialisation ostensibly broaden the scope for consultation but in reality they vest more power in the Secretary of State.** Instead of consulting the First and deputy First Minister regarding the official response to a memorialisation strategy, the Secretary of State will now consult 'such Northern Ireland departments as the Secretary of State considers appropriate'. Further amendments introduce a new focus on 'anti-sectarianism' and the need to ensure that this programme of work ensures the non-recurrence of 'sectarian hostility'. **This speaks to an out-dated conceptualisation of reconciliation that frames the conflict in terms of two sectarian communities.**
- **Amendments relating to victims' participation** include the potential to make a personal statement to the ICRIR, however publication this itself will be subject to a national security veto.

Do amendments address concerns expressed by the Committee of Ministers?

8. The proposed amendments still make no attempt to address the specific areas of ECHR incompatibility expressly identified by the Council of Europe Committee of Ministers (CM).
9. In summary, the areas expressly identified by the CM as among the changes required to address ECHR incompatibility are:
 - a. ensuring that the Secretary of State for Northern Ireland's [SOSNI] role in the establishment and oversight of the ICIR is more clearly circumscribed in law in a manner that ensures that the ICIR is independent and seen to be independent;
 - b. ensuring that the disclosure provisions unambiguously require full disclosure to be given to the ICIR;
 - c. ensuring that the Bill adequately provides for the participation of victims and families, transparency and public scrutiny;
 - d. reconsidering the conditional immunity scheme in light of concerns expressed around its compatibility with the ECHR;
 - e. urging the UK authorities to reconsider provisions of the Bill that would prevent legacy inquests from continuing.⁸
10. As detailed below, some of these concerns are not addressed at all by the Government amendments. Others are engaged with but not in a manner that would allay the concerns raised. Other amendments will exacerbate concerns about ECHR compatibility. This is further detailed below.

Closing down the Package of Measures

11. The Bill will shut down the existing 'package of measures' of legacy mechanisms including inquests, civil claims, Police Ombudsman investigations, PSNI legacy investigations and 'called in' investigations, at the time such mechanisms are increasingly delivering for families.⁹
12. Government amendments have been presented as extending to the 1 May 2024 the timeframe to which inquests, PSNI and Police Ombudsman could run. In practice, however, the framing of the amendments will likely curtail more inquests; place additional prohibitions on the Police Ombudsman and further curtail other criminal investigations.
13. The Bill will 'replace' these mechanisms with the option of a 'review' by the Independent Commission for Reconciliation and Information Retrieval (ICRIR). However, it should be emphasised that the ICRIR is a much weaker and inferior mechanism than all of the existing mechanisms currently investigating legacy cases. This deficit is compounded by the conditional immunities scheme which will preclude the ICRIR from using police powers in its 'reviews' where applicants have immunity.

⁸ [Result details \(coe.int\)](#)

⁹ See [CAJ Rule 9 submission to Committee of Ministers \(July 22\)](#) paragraphs 60-95; which details as providing substantive information recovery and historical clarification "recent legacy inquest decisions and in the 600+ pages of information recovery contained in two large scale Police Ombudsman legacy reports already in 2022. The 'Operation Kenova' independent police team (under the 'Call In' mechanism of General Measures) has also amassed over 50,000 pages of evidence and is poised to publish its own reports. Civil cases are also leading to reparations and information recovery. The Committee of Ministers has noted the 'vital role played by the inquest system' as well as the Police Ombudsman." (para 63)see also [CAJ Rule 9 submission to the Committee of Ministers, May 2023](#), paragraphs 25-42.

14. The Northern Ireland Human Rights Commission has also taken the position that ICRIR ‘reviews’ do not meet ECHR procedural requirements.¹⁰ The Council of Europe Commissioner for Human Rights Dunja Mijatović has also called for the withdrawal of the Bill raising “...a number of serious issues of compliance with the ECHR, including in relation to the independence and effectiveness of the mechanism for the review of Troubles-related incidents by the Independent Commission for Reconciliation and Information Retrieval (ICRIR), the closure of many important existing avenues for victims to seek truth and justice, and the conditional immunity scheme.”¹¹ UN special procedures mandate holders have urged the UK to withdraw the Bill. The Rapporteurs warned that “If approved, the Bill would thwart victims’ right to truth and justice, undermine the country’s rule of law, and place the United Kingdom in flagrant contravention of its international human rights obligations.”¹²

15. The table below highlights the impact of the Bill in closing down existing legacy mechanisms on its present drafting and in light of the proposed Government amendments.

16. This relates to Troubles-related offences. The timeframe is set out in the commencement clause of the Bill (clause 57(2)).

Mechanism	Current Bill¹³	Impact of Proposed Government amendments
No criminal investigation may be continued or begun.	Two months after Bill completes passage.	On the 1 May 2024
No public/family report of a previous criminal investigation can be produced	The report from a previous investigation could still be produced even if a criminal investigation could not continue (albeit with a cut-off date - the 1 May 2023 – which has already passed). ¹⁴	The exemption allowing a report from a criminal investigation to be produced after it has had to cease would be removed.
Current civil actions	Two months from Bill completing passage any civil action brought on or after 17 May 2022 may not be continued.	No change.
New civil actions	No further civil actions can be brought two months after the Bill completes passage (but see above).	No change.
Powers to open new legacy inquests.	A prohibition on new legacy inquests will come into force	A prohibition on new legacy inquests will come into force on the 1 May 2024 (however any such inquest open would

¹⁰ <https://committees.parliament.uk/writtenevidence/109473/html/> paragraph 2.1.

¹¹ [UK Country Visit report December 2022](#), page 8.

¹² [UK: Flawed Northern Ireland ‘Troubles’ Bill flagrantly contravenes rights obligations, say UN experts](#)

¹³ See Clause 57(2) Commencement and Pt III of the Bill as brought to the HL:
https://publications.parliament.uk/pa/bills/lbill/58-03/037/5803037_en_6.html#pt5-1g57
https://publications.parliament.uk/pa/bills/lbill/58-03/037/5803037_en_4.html#pt3

¹⁴ The provision states 1 May 2023 or the date or the date of the establishment of the ICRIR, whichever is earlier, the former however has already passed (clauses 34(3)&(6)).

	two months after the Bill completes passage.	also have to have to be completed by that same date).
Existing inquests already in system.	Inquests that have already substantively commenced ¹⁵ by the 1 May 2023 can continue, others which have not reached that stage cannot.	All inquests must be complete by 1 May 2024 (only a verdict etc can still be issued after that date). The exception that allows inquests substantively commenced but not completed has been removed.
Police Ombudsman investigations	Police Ombudsman legacy <i>complaints</i> investigations must cease and new complaints cannot be brought two months after Bill completes passage. Other Ombudsman investigations into legacy issues that are not complaint based may continue.	Police Ombudsman legacy complaints investigations must cease by 1 May 2024. The amendment also extends this prohibition to any other Ombudsman investigation dealing with legacy matters. There is an exemption for criminal investigations where a prosecution has already begun before 1 May 2024.

17. The impact of these amendments can therefore be summarised as follows:

- **Legacy criminal investigations** can continue until 1 May 2024, but the exemption providing for investigations to issue reports after that date has been removed. The completion of a report from such an investigation can take many months following the conclusion of the investigation. Operation Kenova issued an eight-stage protocol on the publication of its interim report in October 2022, with a view to publication in the new year. In April 2023 Kenova announced stage 2 of that process whereby agencies criticised in the report, are allowed to make representations (Maxwellisation), had been delayed and was nearing completion in April 2023.¹⁶ Into mid-June 2023 the report has still not been published. The amendment removing the provision providing for continued publication of reports from already completed investigations appears to serve no purpose other than potentially thwarting access to investigation reports that may provide significant information recovery to families. It will provide an incentive for the very persons and agencies who have been the subject of investigation and are criticised in reports to seek to delay their publication until the deadline passes.
- **Inquests** the amendments remove the exemption presently in the Bill that permits inquests which have already commenced by 1 May 2023 to continue. Rather there will now be an absolute cut off point for any inquests of 1 May 2024, even if it still underway or at an advanced stage. Only inquests which have entirely completed

¹⁵ The present drafting disapplies the prohibition on continuing inquests to those inquests “at an advanced stage”, which in practice has meant those substantively commenced.

¹⁶ <https://www.kenova.co.uk/update-on-progress-of-interim-report-release>

their proceedings before 1 May 2024 will now be permitted to issue their findings. This change is likely to close down even more inquests than the present formulation.

- **Ombudsman Investigations** the amendments would significantly extend the prohibition on the Police Ombudsman investigating conflict-related human rights violations by the police. At present the Bill is limited to curtailing complaint-based investigations, the amendments would extend this to cover the Ombudsman's broader powers of investigation in legacy cases. Criminal investigation by the Ombudsman may also fall foul of the amendment designed to prevent reports from such investigations being published after 1 May 2024, even when such investigations are completed. There appears no reason for this other than to thwart the publication of Ombudsman reports on completed investigations. It will also provide an incentive for persons who have been subject to investigations to seek to delay the reports.
- **Civil cases** the amendments do not address at all the cut off point for civil cases.¹⁷ The Bill will close down and prohibit all civil claims for conflict-related abuses that commenced after May 2022. Notably such civil cases recently are delivering for victims of human rights violations both in relation to information recovery and reparations. Recently one case relating to a miscarriage of justice found that the victim had been tortured by the army, including 'waterboarding'; a second case provided reparations and truth-recovery for informant-based collusion. Such cases are now being shut down and it is reasonable to conclude the motivation for doing so is to prevent the courts from further highlighting human rights violations.¹⁸

18. It should be reiterated that whilst Government may argue that the existing mechanisms are being shut down to instead transfer legacy cases to the new legacy body, the ICIR is and will remain a far more limited mechanism in relation to its powers and independence.

The limitations on the use of police powers and ECHR compatibility of ICIR 'reviews'

19. Proposed Government amendments¹⁹ to clause 13 would:

¹⁷ One proposed technical amendment to Clause 8 would clarify that family proceedings are not to be considered within the scope of the bar on civil proceedings.

¹⁸ In March the High Court in Belfast awarded reparations of £350,000 GBP to the family of the late Liam Holden in a ruling that found he had been tortured by the British Army, including through the use of 'waterboarding'. The narrative verdict by the Court runs to 60 pages, providing substantive information recovery. In a miscarriage of justice Mr Holden had been sentenced to death in 1973 having been wrongly convicted of the murder of a soldier, Frank Bell, on the basis of a confession. The sentence was later commuted to life imprisonment, and he was released after 17 years. In 2012 the conviction was quashed by the Court of Appeal. In 2022 he launched the civil proceedings in which the High Court has accepted the military tortured, including through simulated drowning ('waterboarding') Mr Holden into the confession. Mr Holden subsequently passed away in 2023. The posthumous damages included compensation for "waterboarding, hooding and threats to kill, malicious prosecution and misfeasance in public office." See [ruling here](#) and media report [here](#). In a second case the High Court awarded compensation of £90,000 GBP to a man who as a child had witnessed the sectarian killing of his grandfather Sean McParland in 1994. The killing involved an informant within the loyalist paramilitary UVF, run by RUC Special Branch. Mr Justice Rooney held that the police knew that the informant had already confessed to his role in other killings but had "*not only turned a blind eye to Informant 1's serious criminality*" ... but also "*went further and took active measures to protect (him) from any effective investigation and from prosecution, despite the fact that (he) had admitted his involvement in previous murders and criminality.*" See [report here](#).

¹⁹ Clause 13 LORD CAINE Page 11, line 1, at end insert— "(A1) The Commissioner for Investigations must comply with the obligations imposed by the Human Rights Act 1998 when exercising functions under this section." *Member's explanatory statement: This amendment expressly confirms that the Commissioner for*

- Place a duty on the ICIR Commissioner for Investigations to “comply with the obligations imposed by the Human Rights Act 1998” [HRA] and
 - Make it clear the Commissioner must consider whether reviews will include a criminal investigation (which could use police powers).
20. The reference to the HRA should be viewed in the context that Government has argued obligations under the HRA do not arise as a matter of domestic law in most Troubles-related cases having argued for temporal restrictions on the scope of the HRA on pre-1990 cases (ten years before the commencement of the HRA). It should also be noted that compliance with the HRA would already be an obligation of the ICIR, unless compelled to act in conflict with ECHR rights by primary legislation (as would be the case with the current Bill).²⁰
21. In tabling the amendment government is arguing that the ICIR will have to comply with obligations under the HRA whilst simultaneously holding the position that there are no such obligations in most Troubles-related cases.
22. Ministers have claimed that ICIR ‘reviews’ can constitute Article 2 ECHR compliant investigations due to the ICIR being able to exercise police powers.²¹
23. However, the use of police powers (rightly) requires the meeting of certain thresholds of being able to investigate a suspect for with regard to an offence for which they can potentially be charged and prosecuted.
24. It therefore appears clear that such powers may not be used against a person who holds *immunity* for an offence through the ICIR. This issue has been raised with the Minister during Parliamentary debate, but no response was given.²²

Investigations (when exercising operational control over the conduct of reviews) must comply with obligations imposed by the Human Rights Act 1998.

Page 11, line 18, at end insert—“(4A) In particular, the Commissioner for Investigations is to decide whether a criminal investigation is to form part of a review.” *Member’s explanatory statement This makes clear that the Commissioner for Investigations should consider whether there should be a criminal investigation as part of an ICIR review.*

Page 11, line 48, at end insert—“(7A) Subsection (A1) does not limit the duty of the Commissioner for Investigations to comply with the obligations imposed by the Human Rights Act 1998 when exercising other functions.” *Member’s explanatory statement This makes clear that the duty of the Commissioner for Investigations to comply with the Human Rights Act 1998 is not limited by the express provision in the new subsection (A1).*

²⁰ By virtue of section 6 of the HRA which requires public authorities to act compatibility with the ECHR, save when required to act differently by primary legislation.

²¹ See for example paragraph 30 of the [ECHR Memorandum on the Bill](#).

²² Baroness Margaret Ritchie put the following question to the Minister, Lord Caine, in the Committee Stage 11 May debate: “Some of the amendments dealing with the question of investigations consider many of those issues. In the past the Minister has confirmed that the ICIR can use police powers in some circumstances. However, can he confirm that such powers would not be exercisable against a person who has immunity for the offence under investigation? He has stated that police powers can be used by the ICIR. In introducing the Bill a year ago in the other place, the former Secretary of State for Northern Ireland stated that the Bill would mean military veterans would no longer face a knock at the door or be taken in for questioning—that is, police powers would not be used against veterans. Is that still the Government’s position, given the contradictions? [Hansard House of Lords 11 May 2023 vol 829 clm 1964](#). The Minister gave no answer to these questions in his response. [Hansard House of Lords 11 May 2023 vol 829 clm 1971](#)

25. In addition, Ministers have given assurances to military veterans that imply the Bill means they will no longer be subject to investigations using police powers such as arrest and questioning. These statements have not been retracted.²³
26. The immunities scheme in this context has the purpose or effect of operating as a ‘get out of investigation’ free card. As the ICIR will not be able to exercise police powers where needed and hence conduct effective investigations when a suspect holds an immunity.
27. Government amendments would exacerbate this problem by incentivising applications to the immunities scheme, and hence place more suspects beyond the reach of effective investigations. This is notable in Government amendments which would abolish the post-GFA early release scheme for conflict related offences.²⁴
28. The Early Release Scheme was an outworking of the 1998 Good Friday Agreement (GFA) whereby persons with serious conflict-related convictions for offences committed before the GFA serve only a maximum of two years in prison before release on licence, rather than a full sentence – including life sentences.²⁵
29. Ministerial correspondence to members of the House of Lords has framed the purpose of these particular amendments as designed to ‘incentivise’ individuals to ‘engage’ with the ICIR, in reference to an application for immunity.²⁶
30. This creates a further entrenchment and exacerbation of the level of impunity provided in the current Bill. The Early Release Scheme allowed for reduced jail time only. An Article 2 ECHR compliant investigation could still take place, along with a prosecution and trial. Indeed, the Early Release Scheme requires such an investigation, prosecution and trial to take place to secure a conviction in order to come into play. By contrast should the incentivising of applications to the immunities scheme by abolishing the Early Release Scheme prevail, in addition to unilaterally rolling back the outworking of the GFA, will have the effect of placing even more suspects beyond the reach of effective ECHR compliant investigations.
31. A further area raised by the CM relating to a lack of effective powers of the ICIR. This included specific concerns regarding the powers of disclosure of the ICIR. The CM urged the

²³ In introducing the Bill in May 2022 the Secretary of State for Northern Ireland Brandon Lewis expressly linked the purpose of the bill to ending investigations against military veterans: “No longer will our veterans, the vast majority of whom served in Northern Ireland with distinction and honour, have to live in perpetual fear of getting a knock at the door for actions taken in the protection of the rule of law many decades ago. With this Bill, our veterans will have the certainty they deserve and we will fulfil our manifesto pledge to end the cycle of investigations that has plagued too many of them for too long.” Official Record (Hansard) House of Commons Tuesday 24 May 2022 Northern Ireland Troubles (Legacy and Reconciliation) Bill Volume 715: debated on Column 115 [https://hansard.parliament.uk/commons/2022-05-24/debates/9A7C93DC-8187-47B9-8786-CA602DA2BB39/NorthernIrelandTroubles\(LegacyAndReconciliation\)Bill#256](https://hansard.parliament.uk/commons/2022-05-24/debates/9A7C93DC-8187-47B9-8786-CA602DA2BB39/NorthernIrelandTroubles(LegacyAndReconciliation)Bill#256) See also Conservative Home piece stating: “This month I brought forward the Northern Ireland Troubles (Legacy and Reconciliation) Bill..... no longer will our veterans be hounded and hauled in for questioning about events that happened decades ago.” <https://conservativehome.com/2022/06/09/brandon-lewis-my-northern-ireland-legacy-plan-no-longer-will-our-veterans-be-hounded-for-about-events-that-happened-decades-ago/>

²⁴ See amendments to Schedule 11 – the effect of which (Members Explanatory Statement) is to “prevent a prisoner from being released under the Northern Ireland (Sentences) Act 1998 if the prisoner is convicted after the ICIR’s power to grant immunity from prosecution becomes exercisable (and so is a case where the prisoner could have avoided conviction by obtaining immunity).”

²⁵ Under the Northern Ireland (Sentences) Act 1998

²⁶ Correspondence from Minister Lord Caine to All Peers, 17 January 2023 (re committee stage).

UK to ensure “that the disclosure provisions [in the Bill] unambiguously require full disclosure to be given to the ICIR.” Government amendments do not address this issue.²⁷

Amendments on Immunities scheme

32. UN and Council of Europe Experts have, in particular, singled out the immunities scheme as incompatible with ECHR and other international obligations.
33. The Bill expressly provides that the ICIR ‘must’ grant an immunity from prosecution for a conflict-related offence when certain criteria are met. This would include acts such torture-regardless of ECHR compatibility or compliance with UN treaties.
34. There is a low threshold with the relevant criteria providing that an applicant only has to give an account they themselves believe to be true and they do not have to give any new information at all.²⁸ For example, a former soldier could read out their original statement to the Royal Military Police (RMP) and meet the criteria, despite the RMP process not being ECHR compliant and the information already potentially being in the public domain.
35. UN special procedures mandate holders have assessed the Immunity Scheme as the Bill as “tantamount to a de-facto amnesty scheme” in particular due to the “low threshold required for granting immunity and the lack of review mechanisms.”²⁹ The CM have called for the scheme to be entirely reconsidered.
36. Immunity is to be granted even if no family is to benefit from information recovery.³⁰
37. The Bill provides that the immunity must be granted for serious conflict-related offence.³¹ Less serious conflict-related offences are subject to an unconditional amnesty.
38. Government amendments to not reconsider the immunities scheme at all nor make any changes to this conspicuously low threshold for immunity set out on the face of the legislation. The scheme remains intact with only ancillary changes proposed.
39. One government amendment, to clause 21, would require the ICIR to take ‘reasonable steps to obtain any information which the Commissioner for Investigations knows or

²⁷ One proposed amendment to clause 5 does augment the list of public authorities who are to assist the ICIR with disclosure to include bodies in Great Britain the existing clause having been restricted to NI. This does not address the ambiguity over the disclosure provisions.

²⁸ The Bill imposes a duty wherein the relevant panel established by the ICIR must grant immunity from prosecution when (A) a person has requested such immunity, (B) where the person has ‘provided an account which is true to the best of their knowledge and belief’ and (C) where the panel is satisfied the conduct described would appear to expose the person to prosecution for one or more serious troubles-related offences. Criterion B is of course central to the extent to which the immunity scheme will be able to contribute to information recovery. Clause 18(4) of the Bill sets out that the applicant’s account could consist entirely of information which they have previously provided to the ICIR or any other process.

²⁹ [UK: Flawed Northern Ireland ‘Troubles’ Bill flagrantly contravenes rights obligations, say UN experts](#)

³⁰ Immunity will be granted: 1 Even where the disclosed material does not relate to a case that the ICIR is reviewing; 2 That even where the ICIR is reviewing a case relating to the disclosed material, it will be at the discretion of the ICIR whether they link the immunity request to that review; 3: In the absence of a case being linked to a review, no information gained in the immunity process will be disclosed to families; 4: It is not clear whether any disclosed information will be published in any format.

³¹ The only exception to this, as a result of an opposition amendment in the House of Commons, are sexual offences. However, it is worth noting, if an applicant applied for immunity for a range of offences, including sexual violence, immunity could be granted to them for all other eligible crimes. Furthermore, whilst immunity may not be granted for sexual offences the bar on criminal investigations of the same sexual offence by the PSNI or other existing mechanisms will remain in place.

believes is relevant to the question of the truth of' an account given relating to an application for immunity.³²

40. This amendment does not alter the very low subjective bar for immunity whereby an applicant only has to believe their account is true and does not have to give any new information at all to meet the criteria. The amendment also does not alter the manner in which the immunities scheme will place persons beyond the reach the use of police powers by the ICRIR, and hence beyond the scope of any effective investigation.
41. This amendment itself also appears limited. It raises questions as to how an ICRIR Commissioner would 'know or believe' information was relevant before seeing it. The provision of 'reasonable steps' is not cross-referenced to any relevant powers. The closing down of other mechanisms currently conducting ECHR-compliant investigations will limit the information available to the ICRIR. It is also unclear as to what standard the truth has to be verified, presumably it relates to the low bar of that the information is true to the applicants' own knowledge and beliefs.
42. A further government amendment is also proposed to revoke immunity when there is a fresh conviction for either a false statement to the ICRIR or if "a person is convicted of a terrorist offence or an offence with a terrorist conviction". The amendment is proposed as a new clause (after clause 23).
43. Whilst this amendment does not address the fundamental problems with the immunities scheme per se, it also does not address the issue that regardless of a revocation of immunity for a Troubles related offence a person, following the commencement of Part III of the Bill, cannot be investigated by any competent ECHR Article 2 compliant body for the same offence.
44. For example, an applicant is responsible for participation in a paramilitary 'kneecapping' in 1992. In 2026 they are then granted, on application, immunity for this offence. Three years later, in 2029 they are then convicted of a new offence under Schedule 1A of the Counter Terrorism Act 2008 and their immunity is consequently revoked. However, the PSNI are prohibited from investigating the original offence, and hence no criminal enforcement action can be taken. The ICRIR is the only body which could have 'reviewed' the case. However, the ICRIR has by that time ceased operations, did not 'review' the incident whilst operational, and in any case could not have conducted an Article 2 compliant criminal investigation, not least as the person had immunity at the time. In short, the applicant still has a *de facto* amnesty in such circumstances.
45. An amendment to clause 21(6) would transfer the power to issue Guidance as to whether the immunities criteria are met from the Secretary of State to the Chief Commissioner of the ICRIR.
46. Whilst in principle it is preferable for Guidance to be vested in the ICRIR itself rather than the Secretary of State, this provision does not address the very low bar for immunity which is set out on the face of the legislation.

³² Clause 21 LORD CAINE Page 20, line 3, at end insert— "(1A) The ICRIR must take reasonable steps to obtain any information which the Commissioner for Investigations knows or believes is relevant to the question of the truth of P's account." *Member's explanatory statement This amendment would require the ICRIR to take reasonable steps to obtain information in connection with determining the truth of P's account (see Clause 18(3)).*

47. Furthermore, it is notable that in this instance there has not been an independent regulated process for the recruitment of the Chief Commissioner.³³
48. Powers to determine the Rules of Procedure for making and dealing with requests for grants of immunity, under clause 20(4), continue to be vested in the Secretary of State and are not affected by the amendments.

Amendments relating to the independence of the ICIR

49. The CM specifically seek measures to ensure “that the Secretary of State for Northern Ireland’s role in the establishment and oversight of the ICIR is more clearly circumscribed in law in a manner that ensures that the ICIR is independent and seen to be independent;”
50. The Government amendments do not address this issue of ECHR incompatibility.
51. One amendment, referenced above, does transfer powers on Guidance on immunities criteria to the ICIR from the Secretary of State, however this has very limited impact.
52. Other powers in the Bill are not transferred away from the Secretary of State. These include powers to make all the ICIR appointments, set the budget, close the ICIR down at any point, extensively shape its caseload, redact the content of ICIR reports with a broadly drafted ‘national security +’ veto, and to solely provide all oversight of the ICIR.
53. There are some limited provisions on appointments. One amendment to schedule 1 provides that the Secretary of State can consult other persons over when making appointment of the ICIR Chief Commissioner. However, it is entirely at the Secretary of State’s discretion who such persons are, and furthermore appears somewhat academic in this instance when the recruitment has already taken place prior to the Bill becoming law.
54. A further Government amendment would empower the Secretary of State limit the term time of commissioners. This would appear to potentially increase the leverage the Secretary of State may have over Commissioners.

Amendments relating to victims’ participation and memorialisation

55. The CM has recommended “ensuring that the Bill adequately provides for the participation of victims and families, transparency and public scrutiny;”
56. There is very limited provision in Government amendments to address this.
57. One proposed new clause, after clause 22, would provide for “Personal statements by persons affected by deaths”. The explanatory note states “*This amendment requires the Chief Commissioner to give individuals affected by a death or other harmful conduct the opportunity to provide personal statements to the ICIR about the effects of the Troubles-related conduct.*”
58. However, the proposed amendments would also provide a national security veto over the contents of such personal statements.³⁴ Such a duty could be deployed to remove concerns by victims of potential involvement of state informants and agents in a death or other human rights violations.
59. There are also proposed Government amendments to part 4 of the Bill which deals with memorialising the Troubles. These amendments appear primarily designed to further enhance the role and powers of the Secretary of State over the memorialisation process.

³³ For a critique see: CAJ Addendum submission to the Committee of Ministers, May 2023, see also the [following Parliamentary Questions confirming](#) the appointment was not regulated by the Public Appointments Commissioner and did not involve the Judicial Appointments Commission.

³⁴ A duty would be placed on the ICIR to redact or not publish a personal statement if information within would conflict with sections 4(1) or s26(2). These, among other matters, relate back to national security duties.

They also frame a particular perspective for the ‘Troubles-related work Programme’ with an out-dated conceptualisation of reconciliation that limits state responsibility by framing the conflict in terms of two sectarian communities.³⁵

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³⁵ The proposed amendments to clause 45 would allow the Secretary of State discretion to pick which organisations and Northern Ireland Departments are consulted in relation to the memorialisation strategy (removing a requirement to consult with the First and deputy First Minister). In similar terms an amendment to clause 50 will provide that the Secretary of State is empowered to pick who will be consulted on appointments of ‘designated persons’ to take forward work under this part of the Bill. An amendment to clause 48 on the Troubles-related work programme would require the work to be carried out to ensure non-recurrence. However, this is not in relation to patterns of violations (as the concept is interpreted in international law), but rather is limited to ‘political and sectarian hostility between people in Northern Ireland.’