

**Submission to the Committee of Ministers from the Committee on the
Administration of Justice (CAJ) in relation to the supervision of the cases
concerning the actions of the security forces in Northern Ireland**

Jordan v the United Kingdom, judgment final on 4 August 2001
Kelly and Ors v the United Kingdom, judgment final on 4 August 2001
McKerr v the United Kingdom, judgment final on 4 August 2001
Shanaghan v the United Kingdom, judgment final on 4 August 2001
McShane v the United Kingdom, judgment final on 28 August 2002
Finucane v the United Kingdom, judgment final on 1 October 2003

and

Hemsworth v UK, judgment final on 16 October 2013
McCaughey & Others v UK, judgment final on 16 October 2013

July 2023

Introduction

1. The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights (FIDH). Its membership is drawn from across the community.
2. CAJ has regularly made Rule 9 communications to the Committee of Ministers on the 'McKerr group of cases' concerning the actions of the security forces in the 1980s and 1990s in Northern Ireland.
3. These submissions have charted the evolution of the 'package of measures' agreed to by the UK further to the above judgments, and their proposed replacement with measures agreed by the UK and Ireland, and political parties in the Northern Ireland Executive, under the December 2014 Stormont House Agreement (SHA). The submissions also cover the unilateral departure by the UK on the 18 March 2020 from its commitment to implement the SHA, the UK Command Paper of July 2021 and the consequent *Northern Ireland Troubles (Legacy and Reconciliation) Bill* (hereafter 'the Bill') introduced into the UK Parliament in May 2022.
4. The Bill will close down all current mechanisms for conducting Article 2 compliant investigations into deaths during the Northern Ireland conflict which were established as the 'Package of Measures' further to the execution of the current judgements. The Bill will instead provide for a *de facto* amnesty through a 'conditional immunity' scheme with a low threshold,¹ and a time-limited Independent Commission for Reconciliation and Information Recovery (ICRIR) to conduct limited 'reviews' of certain cases.
5. This Rule 9 communication is for consideration at the 1475DH meeting (19-21 September 2023). The focus of this submission are the final stages of the Bill in the upper chamber (House of Lords) and the return of the Bill to the lower chamber.²
6. CAJ welcomed the Committee of Ministers (CM) Interim Resolution of June 2023 on these cases. The Interim Resolution expressed serious concern that there had been no progress in amendments 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 ICRIR.³
7. The information on legacy inquests in this submission has been compiled by the NGO the Pat Finucane Centre (PFC).

¹ The legislation stipulates that immunity from prosecution 'must' be granted if the applicant gives an account of a troubles related incident which is true to best of their knowledge and belief.

² CAJ's previous Rule 9 submissions focusing on the Bill include: [July 2022](#) & [Addendum](#): providing a detailed critique of the Bill. [October 2022 with an addendum in November 2022](#) in light of the Second Reading in the upper chamber (House of Lords). January 2023 [critiquing the amendments tabled by the UK authorities; and an addendum in February 2023 on the UK response to opposition amendments](#). [May 2023](#) focusing on developments with the Bill and concurrent delivery of the existing package of measures; with an addendum focusing on the recruitment process for the Chief Commissioner of the proposed new legacy body.

³ [Interim Resolution CM/ResDH\(2023\)148 June 2023](#)

Summary of issues raised: final stages of UK Legacy Bill

- **Timing of UK Government amendments:** Ministers withheld publishing amendments to the Bill until the day after the Committee of Ministers meeting. It has also come to light that the UK has still failed to respond to formal UN concerns on the Bill.
- **Status of Bill:** The final stage of the Bill is now scheduled for 5 September 2023. Ministers had planned and pressed for the Bill to be completed before the July summer recess. However, the Government was defeated in two votes in the upper chamber (the House of Lords) on the Bill. These opposition amendments briefly removed the ‘immunities’ scheme from the Bill and would have compelled the ICRIR to conduct ECHR-compliant criminal investigations. Both amendments were explicitly removed when the Bill returned to the lower house.
- **Continued establishment of ICRIR:** Despite the Bill not having completed passage the UK has continued to unilaterally press ahead and establish the ICRIR. Parliamentary questions confirmed that the recruitment of the ICRIR Chief Commissioner was not regulated by the public appointments commissioner and that the ICRIR is presently staffed by UK government officials. Pressing ahead with the ICRIR has created uncertainty for existing mechanisms as is apparent from difficulties faced by the Police Ombudsman in recruiting investigators for legacy cases.
- **Adherence to rule of law:** Ministers made statements in the UK Parliament implying current proceedings within the NI justice system against the military were ‘vexatious’ prosecutions and investigations. Ministers also complained judges were dealing with legacy inquests too expeditiously, tabling amendments to the Bill to seek to ensure that more inquests that are already in the system are unable to proceed.
- **Government Amendments to the Bill:** Government amendments did not address any of the specific areas of ECHR incompatibility expressly identified by the CM. In particular, the Government amendments now adopted within the Bill:
 - Extend and expedite in practice the process of closing down the existing Package of Measures mechanisms at a time when they are delivering more effectively than ever before.
 - Make only ancillary amendments to the immunities scheme leaving the scheme and its conspicuously low threshold for immunity intact.
 - Make only one amendment to the sweeping powers of Ministers over the functioning of the ICRIR and make ineffective changes to ICRIR ‘reviews.’
- The **Council of Europe Commissioner for Human Rights**, Dunja Mijatović issued a statement assessing the government amendments as leaving “the fundamental problems with the Bill intact.”
- **Legislative Stages:** Report Stage (upper chamber) took place on the 21 and 26 June. Government amendments were adopted, along with the two opposition won votes. Third Reading (4 July) adopted a further Government amendment to prevent compensation for unlawful imprisonment. The Bill returned to the lower chamber on the 18 July where the two opposition amendments were removed reinstating the immunities scheme in the Bill. Ministers blamed the opposition for running out of time for the Bill to return for a final stage in the upper chamber before recess.

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- **House of Lords Report Stage (and return to Commons)**
- **Third Reading in House of Lords – 4 July 2023**

Timing of UK Government Amendments

8. On the 10 May 2023, the Secretary of State for Northern Ireland announced in the UK Parliament that the UK Government would be tabling ‘game changing’ amendments to the Legacy Bill ‘over the next couple of weeks.’⁴
9. This statement was made in response to the spokesperson for the UK opposition calling for a ‘total rethink on legacy’ in light of the broad opposition to the Bill.⁵
10. The commitment to ‘game changing’ amendments was met with scepticism. Such significant amendments to the Bill had been repeatedly promised by Ministers at earlier stages of the Bill and not delivered.
11. In an intervention in January 2023 (at an earlier stage of the Bill) the UN High Commissioner for Human Rights Volker Türk, was critical of the then last-minute publication of amendments. The Commissioner raised concerns that this late tabling would avoid meaningful scrutiny of their content.⁶
12. On this occasion the Government amendments for Report Stage were not in fact tabled or otherwise put into the public domain ‘over the next couple of weeks.’ We understand they were drafted and circulated internally during this timeframe.
13. The UK did not however make public the amendments until late on the evening on the 8 June 2023 the day *after* the CM Meeting.⁷
14. The Council of Europe Commissioner for Human Rights, Dunja Mijatović, issued a statement in advance of the Report Stage debate raising concerns the amendments did not address the fundamental problems with the Bill. The Commissioner recalling the serious concerns expressed by the CM, PACE, UN High Commissioner and UN Special Rapporteurs, stated:

Despite this, the UK government has decided to go ahead with the Bill in a way that does not recognise Northern Ireland’s violent past or honours the suffering of victims. While the government has recently published

⁴ [HC Official Report, 10 May 2023, Volume 732, column 322.](#)

⁵ As above.

⁶ <https://www.ohchr.org/en/press-releases/2023/01/uk-rights-victims-and-survivors-should-be-centre-legislative-efforts-address>

⁷ <https://www.gov.uk/government/news/government-introduces-amendments-to-ni-troubles-legacy-legislation> The evening timing may have been designed to limit the opportunity for journalists to source alternative viewpoints although some outlets were able to do so e.g. see [Amendments to NI Legacy Bill criticised as ‘smoke and mirrors’ by campaigners – The Irish Times](#)

amendments, these leave the fundamental problems with the Bill intact, such as the conditional immunity scheme that would result in impunity for serious human rights violations, the unilateral shutting down of avenues to justice for victims, and questions about the ability of the Independent Commission for Information Recovery to deliver outcomes that would meet human rights standards.

In addition, several judgments related to the legacy of the Troubles have been waiting to be executed for twenty years or more. The government's latest amendments were published the day after the Committee of Ministers concluded its most recent meeting on the supervision of execution of judgments of the Court. As a result, it could not consider the impact of these amendments for the implementation process, and with its next examination to take place in September, it may not have this opportunity again before the Bill is adopted. However, it is my view that adopting the Bill would make the prospect of meeting the requirements of the Court's case law more remote than ever.⁸

15. It has also emerged that the UK has still to respond to UN concerns on the Bill.
16. In a statement in December 2022 UN Special Rapporteurs, Fabian Salvioli and Morris Tidball-Binz raised concerns that 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*" and also stated they regretted the lack of response from the UK authorities to a formal representation from their mandates on the Bill of July 2022.⁹
17. In January 2023 in response to questions in the UK Parliament from the opposition as to why there had been no response to the UN the Secretary of State for Northern Ireland stated attributed a delay to an 'administrative error' and that a formal UK response would be 'issued shortly' along with an apology for the delay.¹⁰
18. Reportedly however in July 2023 the UK authorities had still not responded to the UN, the OHCHR confirming it had '*not received any response officially or has been otherwise contacted by the UK Government to discuss the concerns.*'¹¹ The UK authorities would not respond to media questions as to why no response had been sent. The UK opposition NI spokesperson Peter Kyle MP said in response: "*It is disturbing if the government has evaded the UN's questions, particularly given the global concerns about the legacy bill.*"¹²

⁸ <https://www.coe.int/en/web/commissioner/-/united-kingdom-adopting-northern-ireland-legacy-bill-will-undermine-justice-for-victims-truth-seeking-and-reconciliation>

⁹ <https://www.ohchr.org/en/press-releases/2022/12/uk-flawed-northern-ireland-troubles-bill-flagrantly-contravenes-rights>

¹⁰ <https://questions-statements.parliament.uk/written-questions/detail/2023-01-19/127845>

¹¹

<https://www.irishnews.com/news/northernirelandnews/2023/07/19/news/uk-government-failed-to-respond-to-un-accusation-legacy-bill-flagrantly-contravenes-human-rights-conventions-3451553/>

¹²

<https://www.irishnews.com/news/northernirelandnews/2023/07/19/news/uk-government-failed-to-respond-to-un-accusation-legacy-bill-flagrantly-contravenes-human-rights-conventions-3451553/>

19. The Irish Minister for Foreign Affairs, Tánaiste Micheál Martin, in welcoming the CM Interim Resolution drew attention, in the context of the NI peace agreements having hitherto been bilateral, to the UK continuing to take a unilateral approach to the legacy Bill:

Recent celebrations of the 25th anniversary of the Good Friday Agreement have reminded us how a partnership approach between the two Governments, and the support of Northern Ireland's political parties, has always been central to the Agreement's success.

It is a matter of regret to my government that the Legacy Bill continues its legislative progress without the support of political parties in Northern Ireland, and without support from families, victims' groups or civil society.

I believe that, by providing for amnesties for crimes amounting to gross human rights violations, the Bill, if enacted, would undermine rather than assist reconciliation.¹³

20. On the 26 Jun 2023 the Committee of the Irish Parliament which scrutinises implementation of the peace agreements issued a statement calling on the UK to withdraw the Bill. The Committee emphasised that the *"Bill is a unilateral move away from the 2014 Stormont House Agreement in which parties in Northern Ireland, together with the British and Irish governments, decided on mechanisms to better assist these families, and to pursue justice. That agreement was endorsed again by both governments, in the 2015 Fresh Start and the 2020 New Decade, New Approach deals."* Should the UK enact the Bill the Committee will request that the *"Irish Government to consider interstate litigation in the European Court of Human Rights. This course of action would demonstrate tangible support and solidarity with victims' campaigners by sparing them the costly and arduous task of bringing individual cases to challenge the Bill."*¹⁴

Continued establishment of the ICIR

21. Despite the Bill not completing passage and the international and domestic concerns regarding the Bill the UK has unilaterally pressed on regardless and continued to set up the ICIR.
22. The CAJ addendum Rule 9 communication of May 2023 detailed how the Chief Commissioner of the ICIR had already been recruited in advance of completion of the Bill's passage.¹⁵ Subsequent questions in the UK Parliament confirmed that the process for recruitment had not been regulated by the UK Commissioner for Public Appointments whose remit did not extend to the role¹⁶ and that the Northern Ireland Judicial Appointments Commission (NIJAC – an independent body set up as

¹³ <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2023/june/tanaiste-micheal-martin-welcomes-council-of-europe-decision-on-northern-ireland-legacy-issues.php>

¹⁴ <https://www.oireachtas.ie/en/press-centre/press-releases/20230626-good-friday-committee-calls-on-the-uk-government-to-withdraw-the-northern-ireland-troubles-legacy-and-reconciliation-bill/>

¹⁵ [CAJ-Rule-9-Addendum-submission-May-23.pdf](https://www.parliament.uk/documents/caj-rule-9-addendum-submission-may-23.pdf)

¹⁶ <https://questions-statements.parliament.uk/written-questions/detail/2023-06-02/187237>

an outworking of the Good Friday Agreement to ensure independence in judicial appointments) had also had no role in the appointment.¹⁷

23. A number of parliamentary questions have also highlighted that the ICIR is currently staffed by government officials. By the 25 July Ministers stated ICIR had 25 staff, 46% of whom had come from the Northern Ireland Office (NIO), 42% from other UK Central Government Departments and 12% from other public sector bodies.¹⁸
24. The UK authorities have mobilised considerable resources to seek buy-in to the Bill and its products in advance of passage. This includes the announcement of £5 million GBP for the memorialisation elements of the Bill. This will involve the organisations designated by the Secretary of State developing a strategy to identify and fund new memorialisation structures and initiatives.¹⁹
25. Despite contending such structures would be ‘inclusive’ the Secretary of State chose to make the memorialisation announcement in the UK Imperial War Museum (IWM) in London. The sensitivity of using such a location was heightened in the context that a BBC Panorama investigative documentary had previously revealed that this museum had had on display an assault rifle used in a 1992 massacre of civilians and other Loyalist killings in south Belfast. This occurred whilst there was ongoing Police Ombudsman investigation into police collusion with the loyalist group responsible. The Ombudsman investigation records ‘discussions’ between the then police force and Imperial War Museum regarding the weapon had occurred ‘within weeks’ of the massacre, with the rifle ultimately ‘donated’ to the museum in 1995. A pistol used in the massacre was also given to the museum by the military. The Police Ombudsman report states that *“These decisions, which led to the VZ58 rifle being placed on public display at the IWM, have understandably caused considerable distress to victims and survivors and suspicion as to the manner in which this weapon was disposed of by police.”*²⁰
26. The ICIR has its own website – <https://icir.independent-inquiry.uk/> and has even launched its own ‘have your say’ survey about the functioning of the ICIR.²¹ This has been criticised by victims and NGOs. This is in the context of the lack of any meaningful engagement on the current Bill before it was finalised. There had previously been public consultation on the Stormont House Agreement. Over 17,000 written responses were received and they indicated broad public support for the approach and opposition to an amnesty.²² By contrast the Bill was initially developed

¹⁷ <https://questions-statements.parliament.uk/written-questions/detail/2023-06-02/187238>

¹⁸ See: <https://questions-statements.parliament.uk/written-questions/detail/2023-07-17/194619> and previously <https://questions-statements.parliament.uk/written-questions/detail/2023-07-03/192126> and <https://questions-statements.parliament.uk/written-questions/detail/2023-06-02/187401>

¹⁹ <https://www.gov.uk/government/news/secretary-of-state-announces-5m-legacy-memorialisation-fund-and-digitisation-project>

²⁰ See <https://www.bbc.co.uk/news/uk-northern-ireland-33140144> and Ombudsman report: <https://www.policeombudsman.org/Media-Releases/2022/Investigative-and-intelligence-failures-and-collus> (paragraph 6.6 and 18.104)

²¹ <https://icir.independent-inquiry.uk/have-your-say-in-our-survey/>

²² ‘The clear majority of all respondents to the consultation argued that a statute of limitations or amnesty would not be appropriate for Troubles related matters’ NIO (2019) Addressing the Legacy of Northern Ireland’s Past: Analysis of the Consultation (p.21).

unilaterally by the UK behind closed doors with no meaningful public engagement. Following Parliamentary and other criticism of this the NIO did begin to hold stakeholder meetings, but pressed on with the Bill regardless of the views expressed. The current context is that stakeholders are now being asked for their 'views' at a juncture when the Bill is complete. Speaking to the BBC Paul Gallagher a member of the Victims Forum and representative of WAVE Trauma Centre said *"For me, it's a bizarre circumstance now we're being asked to fill in a survey to sort of rubber-stamp this fait accompli... I think it's actually a cruel thing to ask people to do."*²³

27. Recruitment for up to four further Commissioners for the ICIR is underway in advance of the Bill completing passage. This was commenced on the 24 July with a timeframe presently to the 6 September.²⁴ Under the Bill the power to appoint is solely vested in the Secretary of State. According to the ICIR website a recruitment exercise for the Commissioner for Investigations had been open until the 4 July.²⁵
28. During this period the Scottish Parliament also voted to refuse legislative consent for the ICIR and broader provisions of the Bill to apply to Scotland.²⁶ It is a constitutional convention that the UK Parliament will not usually apply legislation to Scotland that relates to matters transferred to the Scottish Parliament without the express consent of the Scottish Parliament. The UK however in response announced it would disregard its own constitutional arrangements and apply the current Bill to Scotland regardless.²⁷
29. The Northern Ireland Assembly, which has been suspended since May 2022, had in 2021 previously unanimously passed a motion opposing the UK Command Paper from which the present Bill was derived.²⁸ The UK will apply the Bill regardless.

Statements by Ministers and adherence the Rule of Law

30. In the context of discussions on the Bill there have continued to be a number of interventions by Ministers in the UK Parliament that have implied that current investigations and legal proceedings taking place under the package of measures,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/836991/Addressing_the_Legacy_of_the_Past_-_Analysis_of_the_consultation_responses_2_.pdf

²³ <https://www.bbc.co.uk/news/uk-northern-ireland-66310756> see also view of CAJ in <https://www.irishtimes.com/ireland/2023/07/26/new-ni-legacy-body-offers-real-opportunity-to-deliver-answers-people-are-seeking/>

²⁴ See <https://icir.independent-inquiry.uk/career-opportunities/> regarding recruitment of one lead and up to three other non-executive part time commissioners for the ICIR [accessed 30 July 23].

<https://icir.independent-inquiry.uk/news/building-our-commissioner-line-up/>

²⁵ <https://icir.independent-inquiry.uk/news/selection-panel-for-commissioner-for-investigations-formed/>

²⁶ See <https://bills.parliament.uk/publications/51973/documents/3731;> <https://www.irishtimes.com/politics/2023/06/30/scotland-to-opt-out-of-uks-controversial-tribunes-legislation-unless-concerns-addressed/>

²⁷ [https://hansard.parliament.uk/lords/2023-07-04/debates/350E1B11-8033-4F79-9654-EC69F062845A/NorthernIrelandTroubles\(LegacyAndReconciliation\)Bill#contribution-6F0408FE-F31C-4062-8A95-43FF95DAF2FE](https://hansard.parliament.uk/lords/2023-07-04/debates/350E1B11-8033-4F79-9654-EC69F062845A/NorthernIrelandTroubles(LegacyAndReconciliation)Bill#contribution-6F0408FE-F31C-4062-8A95-43FF95DAF2FE)

²⁸ On the 20 July 2021 the Northern Ireland Assembly was recalled from summer recess to debate a motion to reject the UK proposals and call for the withdrawal of the Command Paper. The motion stated that the proposals "do not serve the interests, wishes or needs of victims and survivors nor the requirements of truth, justice, accountability, acknowledgement and reconciliation" and was passed unanimously. <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021/07/20&docID=347308>.

where they concern the actions of the security forces, are ‘vexatious’. Ministers have also criticised the judiciary seeking to discharge ECHR obligations in legacy inquests.

31. On the 22 June 2023 the Minister for Veterans Affairs Johnny Mercer MP responded to a question from a backbench Conservative MP on how Government would protect former soldiers who had served in Northern Ireland from what was termed ‘vexatious litigation’. The Minister, rather than refuting the suggestion due process was not being followed by investigators, prosecutors and the courts, responded by making direct reference to ‘the vexatious nature of *investigations* and litigation’ against military veterans (emphasis added). The Minister stated that ‘we are nearly at the summit of the mountain’ [of protecting veterans from ‘vexatious litigation’] due to the passage of the Bill which would ‘become law by the summer recess.’²⁹
32. The same Minister, when the Bill returned for consideration of amendments to the lower house then expressly named the prosecution of former soldier as an example of a ‘vexatious prosecution’. The soldier had stood trial in 2021 for the shooting in the back of an unarmed civilian with learning disabilities, John Pat Cunningham, in 1974. His legal representatives had lodged legal challenges against the prosecution, however the courts had ruled proceedings, had followed due process.³⁰
33. A non-government MP, the DUP’s Ian Paisley JR in the same debate, claiming there was to be ‘another trial’ against a former RUC [police] officer for a fatal shooting, used parliamentary privilege to refer to a lawyer acting on behalf of the family of the deceased as a “shameful snake-oil salesman of a legal practitioner” engaged in vindictive actions.³¹ Whilst there was no intervention from ministers another MP, Colum Eastwood, did interject alluding to the dangerous consequences of past criticism in the UK Parliament of solicitors acting in NI-conflict related cases. In response the regulatory professional body for solicitors in Northern Ireland issued the following statement: *“The Law Society reiterates its call for attacks on lawyers made in relation to this Bill to cease immediately. Solicitors provide vital support to victims and survivors of the Troubles to access truth and justice and should not come under attack for doing their jobs.”*³²
34. In the same debate a backbench MP from the ruling Conservative party raised concerns that the ICIR may now have powers to investigate military veterans. Whilst the intervention was ambiguous and open to interpretation the MP appeared to seek assurances that it would not. Specifically, he asked the Secretary of State for

²⁹ <https://hansard.parliament.uk/Commons/2023-06-22/debates/AB6FE18A-F087-4C06-AF4C-EED27E39393F/TopicalQuestions> “Mr Philip Hollobone (Kettering) (Con) What steps is the Cabinet Office taking to honour the Conservative party’s manifesto commitment to protect Northern Ireland veterans from vexatious litigation? Johnny Mercer “*I can tell my hon. Friend and the House that we are nearly at the summit of that mountain. The Bill is continuing to go through the Lords. It will come back to this House and become law by the summer recess. We will have delivered on a manifesto commitment to protect those who served us in Northern Ireland, of whom we are deeply proud, from the vexatious nature of investigations and litigation, while providing a better opportunity for all victims of that conflict to find out what happened and to focus on reconciliation and the future.*”

³⁰ See: <https://www.bbc.co.uk/news/uk-northern-ireland-58960262>

³¹ [https://hansard.parliament.uk/commons/2023-07-18/debates/EADA122A-B956-4296-A739-B66818A2A4B6/NorthernIrelandTroubles\(LegacyAndReconciliation\)Bill#contribution-C784E979-744B-45A9-A340-5ADAF6C374D](https://hansard.parliament.uk/commons/2023-07-18/debates/EADA122A-B956-4296-A739-B66818A2A4B6/NorthernIrelandTroubles(LegacyAndReconciliation)Bill#contribution-C784E979-744B-45A9-A340-5ADAF6C374D)

³² <https://www.lawsoc-ni.org/statement-on-attacks-on-lawyers-troubles-and-reconciliation-bill>

assurances that the Bill would not be “*institutionalising the mechanism for a republican lawyer fest, which would be totally contrary to the whole point of bringing in the Bill in the first place?*” The Secretary of State responded by stating that his “honest answer” was “yes.” The Minister did not challenge the assertion that official investigations are driven by a ‘republican lawyer fest.’³³

35. The same backbench MP also sought an assurance that the Bill would *not* lead to all military killings in the early part of the conflict being reinvestigated to an Article 2 ECHR standard. The Minister gave this assurance.³⁴ This issue relates to military killings prior to 1973 which were not investigated by the police at the time, but rather were dealt with internally by the Royal Military Police (RMP), an approach the domestic courts have long ruled was not ECHR-compliant.³⁵ Given the lack of a previous ECHR-compliant investigation such cases were expressly to be among those to be subject to an ECHR-compliant investigation under the mechanisms to be established by the Stormont House Agreement.³⁶
36. In the upper chamber (Lords) the Minister claimed the legacy inquest system had been ‘overloaded.’ The Minister blamed coronial judges progressing inquests too ‘expeditiously’ since the Bill’s introduction for this (rather than the pressure created by the arbitrary deadline for shut down of inquests within the Bill). The Secretary of State repeated this position when the Bill returned to the lower house.³⁷
37. The fact that Judges have apparently progressed more cases than the Minister would have wished for was cited as justification for a UK Government amendment to the Bill designed to ensure more inquests were closed down. The amendment moves the cut off date for inquests to 1 May 2024, *but removes the exemption for inquests that had already reached the stage of a substantive hearing*. The Minister stated the

³³Mark Francois MP “*The Secretary of State said that it has taken a year for the Bill to go through the House of Lords—I and others campaigned for four years for the Bill even to be introduced in the first place. I fear that some of the Government’s own amendments introduced in the other place have had the effect of swinging the pendulum too far—I admit it is a delicate balance—against our veterans who served in Operation Banner in Northern Ireland. Specifically, the Bill now gives the independent commission extremely wide and latitudinal powers to decide whether a veteran should still be investigated, even despite the Bill’s so-called double-jeopardy provisions. The decision still ultimately lies with the commission. It also has great latitude in deciding whether a veteran has complied with an investigation, which would then allow them immunity. They would not get it if the commission ruled they had not complied. Can the Secretary of State absolutely assure me in his heart of hearts that we are not institutionalising the mechanism for a republican lawyer fest, which would be totally contrary to the whole point of bringing in the Bill in the first place?*” Secretary of State “*I am a great believer in short and honest answers to such questions, and the answer is yes...*”

[https://hansard.parliament.uk/commons/2023-07-18/debates/EADA122A-B956-4296-A739-B66818A2A4B6/NorthernIrelandTroubles\(LegacyAndReconciliation\)Bill#contribution-9E91BA90-BCBB-4516-A657-F7792C8AA495](https://hansard.parliament.uk/commons/2023-07-18/debates/EADA122A-B956-4296-A739-B66818A2A4B6/NorthernIrelandTroubles(LegacyAndReconciliation)Bill#contribution-9E91BA90-BCBB-4516-A657-F7792C8AA495)

³⁴[https://hansard.parliament.uk/commons/2023-07-18/debates/EADA122A-B956-4296-A739-B66818A2A4B6/NorthernIrelandTroubles\(LegacyAndReconciliation\)Bill#contribution-215860E8-5013-4BB5-9763-50E23C591411](https://hansard.parliament.uk/commons/2023-07-18/debates/EADA122A-B956-4296-A739-B66818A2A4B6/NorthernIrelandTroubles(LegacyAndReconciliation)Bill#contribution-215860E8-5013-4BB5-9763-50E23C591411)

³⁵<https://www.judiciaryni.uk/sites/judiciary/files/decisions/In%20the%20matter%20of%20an%20application%20by%20Mary%20Louise%20Thompson%20for%20Judicial%20Review.pdf>

³⁶ Stormont House Agreement, paragraphs 30 & 34.

³⁷[https://hansard.parliament.uk/commons/2023-07-18/debates/EADA122A-B956-4296-A739-B66818A2A4B6/NorthernIrelandTroubles\(LegacyAndReconciliation\)Bill#contribution-7635BC80-FFCD-422D-816F-EC5AA7F7D764](https://hansard.parliament.uk/commons/2023-07-18/debates/EADA122A-B956-4296-A739-B66818A2A4B6/NorthernIrelandTroubles(LegacyAndReconciliation)Bill#contribution-7635BC80-FFCD-422D-816F-EC5AA7F7D764)

purpose of the amendment was for only inquests that would be complete within the next year to now proceed.³⁸

Impact of Bill on Package of Measures

Inquests

38. The following information has been provided for this submission from NGO the Pat Finucane Centre (PFC) regarding the status of legacy inquests.
39. On 28th February 2019, the Lord Chief Justice announced a five-year plan to deal expeditiously with the outstanding legacy inquest. The plan was due to commence in April 2020, and deal with 54 cases, relating to 95 deaths, over a five-year period. Adequate resourcing and a dedicated Legacy Inquest Unit was established to provide legal, administrative, and investigative support, as required, by the Presiding Coroner and Coroners dealing with particular legacy inquests.³⁹
40. The pandemic and other factors delayed the implementation of the five-year plan, however the Coroner Service has confirmed that they are currently dealing with cases listed for Year 3. A number of Year 1 and Year 2 inquests are still outstanding (for example the Springhill/ Westrock inquest concerning the deaths of five individuals by the British Army on 9th August 1972 was originally listed for Year 2 of the 5-year plan.)
41. Despite the delays due to the pandemic, many inquests have concluded in the last three years. Many of these inquests have shown that the actions of state actors were disproportionate and unjustified. For example:
 - Stephen Geddis (aged 10), shot dead by British soldier on 30 August 1975, Coroner held (verdict 06.09.22) that the victim posed no threat, and the firing was not justified.
 - Thomas Mills, shot dead by British soldier in July 1972, Coroner held (verdict 13.05.22) that the soldier was not justified in opening fire and the force used was disproportionate to the threat perceived.
 - Pat McElhone, shot dead by British soldier on 7th August 1974, Coroner held (verdict 21.01.21) that the shooting cannot be justified.
 - Ballymurphy massacre, concerning the deaths of ten civilians shot dead by the British army in August 1971 (Francis Quinn, Fr Hugh Mullan, Noel Phillips, Joan Connolly, Daniel Teggart, Joseph Murphy, Edward Doherty, John Laverty,

³⁸ Lord Caine “Our amendment provides until 1 May 2024 for inquests to conclude. Since the Bill’s introduction, expeditious case management in order to reach an “advanced stage” has resulted in the overloading of a system that was already struggling under incredible pressure, causing delay and frustration. This amendment will ensure that resources will now be focused on completing those inquests that have a realistic prospect of conclusion in the next year.” [https://hansard.parliament.uk/lords/2023-06-21/debates/7F755B57-E4F7-4925-B8B0-7B5DCF2B4909/NorthernIrelandTroubles\(LegacyAndReconciliation\)Bill#contribution-24F31876-E4BE-4040-9349-4F5AE8AAFEDC](https://hansard.parliament.uk/lords/2023-06-21/debates/7F755B57-E4F7-4925-B8B0-7B5DCF2B4909/NorthernIrelandTroubles(LegacyAndReconciliation)Bill#contribution-24F31876-E4BE-4040-9349-4F5AE8AAFEDC)

³⁹ [Presiding Coroner's Statement - State of Readiness Event - 7 June 2019.pdf \(judiciaryni.uk\)](#)

Joseph Corr, and John James McKerr.) Corner held (verdict 11.05.21) that the killings were unjustified.

- Kathleen Thompson, shot dead by British soldier on 6th November 1971. Coroner held (29.06.22) that the shooting was ‘unjustified.’
- Leo Norney (17) shot dead by British soldier on 13 September 1975. Corner held (verdict 03.07.23) that Leo was ‘entirely innocent’ and that he had been deliberately killed by Paratrooper McKay.

42. Under the amended Legacy Bill, those inquests that have not *been completed* by 1st May 2024 will not now proceed. This includes those that have not commenced but there is also uncertainty concerning inquests that have opened and are due to be heard between September 2023 and when the Legacy Bill provisions take effect on 01 May 2024. For example, the Springhill/ Westrock inquest concerning the deaths of 5 individuals (3 of which were children) opened in February 2023, and heard evidence from a number of civilian witnesses. Evidence from military and expert witnesses is still to be heard. Families of the bereaved are concerned that there is insufficient time for the outstanding witnesses to be identified and give evidence.
43. The inquest into the murder of Sean Brown in 1997 by loyalists is also due to recommence on 8th January 2024 and run for four weeks. To date there have been in excess of 35 preliminary hearings regarding this case. The inquest commenced in March 2023, however it was postponed in June 2023 because materials from the security forces still had not been disclosed.⁴⁰ Legal representatives for the PSNI have indicated to the Coroner that the new timetable for this inquest ‘cannot be met’ and therefore there is a legitimate concern that this inquest will also not conclude by the 01 May 2024.⁴¹ The PFC and Brown family believe the State agencies may deliberately delay in handing over materials to prevent the inquest from concluding.
44. The Attorney General has also granted new inquests into conflict-related deaths since the commencement of the 5 year-plan. These include the 1972 IRA murder of Corporal James Elliott (inquest granted February 2023), and the inquest into the fatal shooting of Thomas Burns in 1972 by the British Army (inquest granted 30th March 2023). PFC also support families who have outstanding submissions with the Attorney General’s Office seeking new inquests to examine the death(s) of their loved ones or are in the process of making such submissions. Under the provisions of the Legacy Bill the inquests into the deaths of James Elliott, Thomas Burns and any other newly granted inquest will not proceed.

Police Ombudsman

45. In relation to legacy investigations by the Police Ombudsman the Bill has already had a negative impact with the uncertainty regarding job security within Historical Investigation Directorate having an adverse impact on the recruitment of staff.

⁴⁰ [Troubles: Sean Brown inquest delays criticised by coroner - BBC News](#)

⁴¹ [Sean Brown inquest: State agencies accused of ‘deliberately delaying’ information release over death | Belfast News Letter](#)

46. The Ombudsman is currently dealing with around 442 complaints relating to events which the Ombudsman would be prohibited from investigating by 1 May 2024 under the provision of the Bill:

- Of the total 167 of these complaints are allocated for investigation but many are unlikely to be completed before the 1 May 2024.
- Of these complaints 69 are anticipated for completion before this date.
- The remaining 275 (of the 442) complaints etc have been subject of limited research and assessment in order to inform prioritisation and scheduling of investigations.⁴²

47. Those complaints currently anticipated to be completed before the cut off date could of course be delayed. One particular risk is that the very agencies and persons subject to investigation and who may be criticised in reports may seek to delay their publication until the deadline passes.

Operation Kenova and other ‘Call in’ Investigations

48. An independent police team led by a former Chief Constable Jon Boucher has been undertaking a number of investigations under the procedure under the Package of Measures whereby the Police Service of Northern Ireland can ‘call in’ another UK police force to undertake an investigation. Such an investigation can use full police powers. Three investigations and one review have been conducted by this team which has a dedicated website named after its in initial investigation Operation Kenova: <https://www.opkenova.co.uk/>

49. In October 2022 Operation Kenova published a *Protocol on Publication of Public Reports* (‘the Protocol’) from its investigations. This sets out an eight-stage process that will be followed for the publication of all of its public reports.⁴³

50. We understand that of the four operations being conducted the status of the Reports is as follows:

- *Operation Kenova* (investigating the involvement of a state agent codenamed ‘Stakeknife’ within the IRA). An Interim Report was originally scheduled for publication at the beginning of 2023.⁴⁴ In April 2023 it was announced the Stage 2 of the Protocol – a process whereby representations can be made by agencies or persons criticised in the report (‘Maxwellisation’) – had been delayed but that Stage 4 (security checking) would commence in May 2023.⁴⁵ We understand that the interim report is now on schedule for publication in Autumn 2023.
- *Operation Turma* (investigating the killing of three RUC officers by an IRA landmine at Kinnego Embankment in County Armagh on 27 October 1982.) We understand the investigation is completed and a full file has been

⁴² Reply to CAJ from OPONI 27 July 2023.

⁴³ [https://www.kenova.co.uk/A%20Kenova%20Reports%20Protocol%20-%20for%20Publication%20with%20Logo%20\(002\).pdf](https://www.kenova.co.uk/A%20Kenova%20Reports%20Protocol%20-%20for%20Publication%20with%20Logo%20(002).pdf)

⁴⁴ <https://www.kenova.co.uk/kenova-report-set-for-new-year-after-release-protocol-finalised>

⁴⁵ <https://www.kenova.co.uk/update-on-progress-of-interim-report-release>

submitted to the Public Prosecution Service (PPS), with a PPS decision and report publication pending.

- *Operation Mizzenmast* (an investigation into the death of Jean-Smyth Campbell in 1972) we understand the investigation has been completed and the process for publishing the report under the above Protocol is now commencing.
- *Barnard Review* (not an investigation but a review to produce an analytical report on collusion in the Glenanne Gang series of killings). We understand this report is scheduled for completion in 2024.

House of Lords Report Stage and return to Commons

51. The Report Stage in the upper chamber took place on the 21st and 26th June 2023.

52. The Government amendments made no attempt to address the specific areas of ECHR incompatibility expressly identified by the Council of Europe Committee of Ministers (CM) Decisions, which in summary were:

- 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.⁴⁶

53. Some of these concerns were not addressed at all by the Government amendments. Others were engaged with but not in a manner that would allay the concerns raised. Other amendments exacerbated concerns about ECHR compatibility. This is further detailed below.

54. References to clauses in the Bill below refer to the Bill as brought to the upper chamber (Lords) from the lower chamber (Commons), prior to the amendments being adopted.⁴⁷ No Government amendments were subject to successful challenge.

Closing down the Package of Measures

55. As noted above the Bill will shut down the existing 'package of measures' of legacy mechanisms including inquests, civil claims, Police Ombudsman investigations, PSNI

⁴⁶ [Result details \(coe.int\)](#)

⁴⁷ Bill as brought to HL from HC accessible [here](#). The bill was not amended at HL Committee Stage.

legacy investigations and ‘called in’ investigations, at the time such mechanisms are increasingly delivering for families.⁴⁸

56. Government amendments were presented as extending to the 1 May 2024 the timeframe to which inquests, PSNI and Police Ombudsman could run. In practice, however, as set out below, the impact of the amendments will curtail more inquests, place additional prohibitions on the Police Ombudsman and potentially further curtail other criminal investigations.
57. The Bill will ‘replace’ these mechanisms with the option of a ‘review’ by the ICIR. However, the ICIR is a much more limited mechanism. The Northern Ireland Human Rights Commission has taken the position that ICIR ‘reviews’ do not meet ECHR procedural requirements.⁴⁹ The Commissioner for Human Rights Dunja Mijatović has also specified the independence and effectiveness of ICIR reviews as one of the issues of compliance with the ECHR, with the Bill.⁵⁰
58. The table below highlights the impact of the Bill before and after the amendments in relation to closing down the existing package of measures. This relates to Troubles-related offences. The timeframe is set out in the commencement clause of the Bill (clause 57(2)).

Mechanism	Bill prior to amendment at Lords Report Stage⁵¹	Bill following Amendment
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 (with a cut-off date). ⁵²	The exemption allowing a report from a criminal investigation to be produced after it has had to cease was removed.

⁴⁸ 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.

⁴⁹ <https://committees.parliament.uk/writtenevidence/109473/html/> paragraph 2.1.

⁵⁰ [UK Country Visit report December 2022](#), page 8.

⁵¹ 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

⁵² The provision sets a cut-off date of 1 May 2023 or the date or the date of the establishment of the ICIR, whichever is earlier, the former date however had already passed by this stage (clauses 34(3)&(6)).

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 would come into force two months after the Bill completes passage.	A prohibition on new legacy inquests will come into force on the 1 May 2024 (however any such inquest open would also have to have to be completed by that same date).
Existing inquests already in system.	Inquests that have already substantively commenced ⁵³ 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. Certain 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 extended 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.)

⁵³ The drafting disappplied the prohibition on continuing inquests to those inquests “at an advanced stage”, which in practice had meant those substantively commenced.

59. The impact of the amendments can therefore be summarised as follows:

- **Legacy criminal investigations** can continue until 1 May 2024, but the express 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. (For example, 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. Following delays the report is now expected in Autumn 2023). The amendment that removes the express 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. As noted, this amendment also provides an obvious 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.
- **Inquests** the amendments removed the exemption in the Bill that permitted certain inquests which have already substantively 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 the inquest is at an advanced stage. Only inquests which have entirely completed their proceedings before 1 May 2024 will now be permitted to issue their findings. This change is self-evidently designed to close down even more inquests than the previous formulation.
- **Ombudsman Investigations** the amendments significantly extend the prohibition on the Police Ombudsman investigating conflict-related human rights violations by the police. The Bill was limited to curtailing complaint-based investigations, the amendments extend this to cover the Ombudsman's broader powers of investigation in legacy cases. Criminal investigations by the Ombudsman may also have fallen under the provision previously in the Bill designed to allow reports from investigations completed before the deadline being subsequently published that has now been removed. There appears no reason for this other than to thwart the publication of Ombudsman reports on completed investigations.
- **Civil cases** the amendments did not address the cut off point for civil cases.⁵⁴ 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 via legal discovery powers as well as reparations for victims. 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.⁵⁵

⁵⁴ One technical amendment to Clause 8 clarified that family proceedings are not to be considered within the scope of the bar on civil proceedings.

⁵⁵ In March 2023 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

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.

The limitations on the use of police powers and ECHR compatibility of ICRIR ‘reviews’

60. Government amendments⁵⁶ to clause 13:

- Placed a duty on the ICRIR Commissioner for Investigations to “comply with the obligations imposed by the Human Rights Act 1998” [HRA] and
- Made it clear the Commissioner must consider whether reviews will include a criminal investigation (which could use police powers).

61. 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 ICRIR, unless compelled to act in conflict with ECHR rights by primary legislation (as would be the case with the current Bill).⁵⁷

‘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](#).

⁵⁶ 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 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 ICRIR 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).*

⁵⁷ 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.

62. 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.
63. Ministers have claimed that ICIR ‘reviews’ can constitute Article 2 ECHR compliant investigations due to the ICIR being able to exercise police powers.⁵⁸
64. However, the use of police powers (rightly) requires the meeting of certain thresholds of being able to investigate a suspect with regard to an offence for which they can potentially be charged and prosecuted.
65. 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.⁵⁹
66. 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.⁶⁰
67. 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.
68. Government amendments at Report Stage exacerbated this problem by incentivising applications to the immunities scheme hence placing more suspects beyond the reach of effective investigations. This is notable in amendments which abolished the ‘Early Release Scheme’ for conflict related offences.⁶¹

⁵⁸ See for example paragraph 30 of the [ECHR Memorandum on the Bill](#).

⁵⁹ 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](#)

⁶⁰ 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/>

⁶¹ 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

69. 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.⁶²
70. 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.⁶³
71. 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 the incentivising of applications to the immunities scheme by abolishing the Early Release Scheme, in addition to unilaterally rolling back an outworking of the GFA, will have the effect of placing even more suspects beyond the reach of effective ECHR compliant investigations.
72. A further area raised by the CM related specific concerns regarding the powers of disclosure of the ICIR. The CM urged the UK to ensure “that the disclosure provisions [in the Bill] unambiguously require full disclosure to be given to the ICIR.” Government amendments did not address this issue.⁶⁴ An opposition amendment to address the matter and strengthen the disclosure powers in a manner which would have addressed CM concerns was also rejected by Government.⁶⁵

Amendments on Immunities scheme

73. As noted, UN and Council of Europe Experts have, in particular, singled out the immunities scheme as incompatible with ECHR and other international obligations.
74. Again 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.
75. As noted, 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.⁶⁶ For example, a former soldier could

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).”

⁶² Under the Northern Ireland (Sentences) Act 1998

⁶³ Correspondence from Minister Lord Caine to All Peers, 17 January 2023 (re committee stage).

⁶⁴ One proposed amendment to clause 5 did 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.

⁶⁵ <https://bills.parliament.uk/bills/3160/stages/17158/amendments/94211>

⁶⁶ 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

read out their original statement given 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.

76. 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.”⁶⁷ The CM have called for the scheme to be entirely reconsidered.
77. Immunity is to be granted even if no family is to benefit from information recovery.⁶⁸
78. The Bill provides that the immunity must be granted for serious conflict-related offence.⁶⁹ Less serious conflict-related offences are subject to an unconditional amnesty.
79. Government amendments did 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.
80. One government amendment, to clause 21, requires the ICRIR to take ‘reasonable steps to obtain any information which the Commissioner for Investigations knows or believes is relevant to the question of the truth of’ an account given relating to an application for immunity.⁷⁰
81. 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 did not alter the manner in which the immunities scheme will place persons beyond the reach the use of police powers and hence an effective investigation by the ICRIR.
82. This amendment itself was 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

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 ICRIR or any other process.

⁶⁷ [UK: Flawed Northern Ireland ‘Troubles’ Bill flagrantly contravenes rights obligations, say UN experts](#)

⁶⁸ Immunity will be granted: 1 Even where the disclosed material does not relate to a case that the ICRIR is reviewing; 2 That even where the ICRIR is reviewing a case relating to the disclosed material, it will be at the discretion of the ICRIR 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.

⁶⁹ 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.

⁷⁰ 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)).*

investigations will limit the information available to the ICIR. It is also unclear as to what standard the truth has to be verified.

83. A further government amendment provides for the revocation of immunity when there is a fresh conviction for either a false statement to the ICIR 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).
84. 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.
85. By way of illustration, consider the hypothetical case of an applicant who has been 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 Police Service of Northern Ireland (PSNI) would be prohibited from investigating the original offence, and hence no criminal enforcement action can be taken. The ICIR is the only body which could have ‘reviewed’ the case. However, the ICIR 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 for an offence that is in conflict with Article 3 of the ECHR.
86. An amendment to clause 21(6) transferred the power to issue Guidance as to whether the immunities criteria are met from the Secretary of State to the Chief Commissioner of the ICIR. Whilst in principle it is preferable for Guidance to be vested in the ICIR itself rather than the Secretary of State, again this provision does not address the very low bar for immunity which is set out on the face of the legislation.
87. 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 were not affected by the amendments.

Amendments relating to the independence of the ICIR

88. The CM specifically sought 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;*”
89. The Government amendments did not address this issue save for the one amendment, referenced above, that transferred powers on Guidance on immunities criteria to the ICIR from the Secretary of State.
90. 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.

91. 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.
92. A further Government amendment empowered 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

93. The CM has recommended "ensuring that the Bill adequately provides for the participation of victims and families, transparency and public scrutiny;"
94. There was very limited provision in Government amendments to address this.
95. One new clause, after clause 22, provides 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.*"
96. However, the proposed amendments would also provide a national security veto over the contents of such personal statements.⁷¹ 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.
97. There were also Government amendments to part 4 of the Bill which deals with memorialising the Troubles. These amendments appear to have further enhanced the role and powers of the Secretary of State over the memorialisation process. 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.⁷²

⁷¹ 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.

⁷² 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.'

Government Defeats on Opposition amendments – and return of Bill to Commons

98. Government suffered two narrow defeats in votes on opposition amendments at Report Stage. Another vote on an opposition amendment which would have removed the bar on legacy inquests from the Bill, was narrowly defeated.⁷³
99. The first amendment required that ICIR reviews to be ECHR compatible, be carried out to criminal justice standards (modelled on the aforementioned Operation Kenova); gather as much information as possible; and explore all evidential opportunities.⁷⁴
100. The second opposition amendment which prevailed removed the immunities scheme from the Bill.⁷⁵
101. When the Bill returned to the lower house (18 July) Government resisted both amendments and won votes on them, reinstating the immunities scheme to the Bill and removing the amendment which would have sought to require, *inter alia*, ICIR reviews to be ECHR compatible.⁷⁶
102. The UK Government had intended on ensuring the Bill would complete passage by before the summer recess but ran out of parliamentary time with the Secretary of State blaming the opposition for the delay.⁷⁷
103. The (31 July) UK response to the Committee of Ministers in advance of the current meeting confirms the UK Governments expectation that the legislation will become law shortly after the final stage in the House of Lords on the 5 September 2023.⁷⁸

Third Reading in House of Lords – 4 July 2023

104. Before the Bill returned to the lower house (Commons) there was a final substantive stage in the upper house Lords. This could not deal with matters already voted on in Report stage but did lead to other Government amendments on a single issue.
105. In this instance Government tabled amendments to reverse the outcome of a 2020 ruling of the UK Supreme Court relating to the validity of ‘Interim Custody Orders’

⁷³ <https://votes.parliament.uk/votes/lords/division/2954>

⁷⁴ <https://votes.parliament.uk/votes/lords/division/2951> Baroness Ritchie of Downpatrick moved amendment 31, in clause 13, page 11, line 13, at end to insert—
“(3A) The Commissioner for Investigations must ensure that each review—
(a) is carried out to criminal justice standards as modelled on Operation Kenova,
(b) complies fully with obligations under the European Convention on Human Rights,
(c) gathers as much information as possible in relation to the death or harmful conduct, and
(d) explores all evidential opportunities.
(3B) “Operation Kenova” means the independent investigation established under the overall command of former Chief Constable Jon Boutcher in 2016, known as Operation Kenova.”

⁷⁵ <https://votes.parliament.uk/votes/lords/division/2952>

⁷⁶ <https://bills.parliament.uk/bills/3160/stages/17849>

⁷⁷ <https://twitter.com/chhcalling/status/1681659565211893762>

⁷⁸ DH-DD(2023)900 / [1475th meeting \(September 2023\) \(DH\) - Rule 8.2a - Communication from the authorities \(28/07/2023\) concerning the case of MCKERR v. the United Kingdom \(Application No. 28883/95\) \[Anglais uniquement\]](#). (Public)

made as part of the policy of internment (imprisonment without trial) which operated from 1971-1975 in Northern Ireland.

106. That policy of imprisonment without trial indisputably fuelled the Northern Ireland conflict. The policy engaged Article 5 ECHR and relied on a derogation from the ECHR. Baroness Nuala O’Loan speaking during the debate summarised the impact of internment as follows:

Internment without trial was introduced on 9 August 1971 and continued until 5 December 1975. About 340 people were detained initially, often just scooped up by the Army because of their age and where they lived. About 100 were released within 48 hours; 17 people died in the rioting which followed and an estimated 7,000 Catholics had to flee their homes when they were attacked by loyalists. Initially, internment was carried out under regulations made under the special powers Act. All those detained were from the Catholic community. The interpretation of the Detention of Terrorists (Northern Ireland) Order 1972—introduced that November—by the Supreme Court is the subject of today’s government amendment. Overall, 1,981 people were detained without trial, 1,874 from the Catholic/ nationalist /republican community and 107 from the Protestant/unionist/loyalist community. That began in 1973. It is generally accepted that internment without trial was a major recruiting agent for the IRA, and the Government said decades ago that they would never introduce it again.⁷⁹

107. The internment policy also engaged Article 14 with Article 5 ECHR insofar as persons detained were predominantly from the (Irish nationalist)/Catholic community. This was at a time when there were both Irish Republican armed groups and (pro British) loyalist paramilitaries active. Remarkably the British Army had at the time (in 1972) adopted a separate ‘Arrest Policy for Protestants’.⁸⁰ In 2022 a group of Protestant men were given leave in civil proceedings alleging they had been “imprisoned without trial to balance the number of Catholics being detained under the policy.”⁸¹
108. The purpose of the Government amendments is to prevent persons seeking compensation for their detention under ‘Interim Custody Orders’.
109. The UK Supreme Court in *R v Adams [2020] UKSC 19*, in summary, ruled that the Interim Custody Orders were not valid as they had not been individually considered by the Secretary of State as the legislation required. The applicant was Gerry Adams the former President of Sinn Féin. The effect of the ruling would apply to a much broader cohort of former detainees.
110. Whilst there is a much broader prohibition on civil litigation related to the Northern Ireland conflict within the Bill, there is a retrospective exception for cases which commenced before the Bill was introduced. The amendment on Interim Custody

⁷⁹ [https://hansard.parliament.uk/lords/2023-07-04/debates/350E1B11-8033-4F79-9654-EC69F062845A/NorthernIrelandTroubles\(LegacyAndReconciliation\)Bill#contribution-61D0021F-BD14-419E-9C58-CBBCCB6925B2](https://hansard.parliament.uk/lords/2023-07-04/debates/350E1B11-8033-4F79-9654-EC69F062845A/NorthernIrelandTroubles(LegacyAndReconciliation)Bill#contribution-61D0021F-BD14-419E-9C58-CBBCCB6925B2)

⁸⁰ <https://www.patfinucanecentre.org/declassified-documents/arrest-policy-protestants>

⁸¹ <https://www.newsletter.co.uk/news/crime/group-of-elderly-loyalists-secure-legal-hearing-into-internment-claims-3607674>

Order by contrast does not contain this exemption and aims to prevent civil proceedings and compensation for unlawful imprisonment regardless of when the proceedings were taken. The amendments were incorporated into the Bill.

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