

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 14, page 12, line 12

add at end “and respond to any questions”

Effect

This amendment imposes a duty to respond to questions posed by the Commissioner for Investigations upon a person who has been required to submit information under clause 14.

Reason

Clause 14 sets out various requirements for the supply of information which can be set by the Commissioner for Investigations. Clause 14(2) provides that the Commissioner for Investigations may by notice require a person to attend at a time and place stated in the notice to provide information. There is however no power to require such a person to respond to questions on the information provided.

This is a gap in the powers of the Commissioner which needs to be filled. This amendment achieves that objective.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS
AMENDMENT TO BE MOVED IN COMMITTEE**

Clause 18, page 16, line 11 leave out “C” and insert “D”

Effect

This is a paving amendment for the amendment on the list which defines the content of Condition D.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

- Clause 18, page 16, line 30
- add at end “() Condition D: The ICRIR is satisfied that the grant of immunity would:
- i. be compatible with convention rights,
 - ii. comply with the constitutional principle of the rule of law; and
 - iii. satisfy the interest of justice”

Effect

This probing amendment ensures that the ICRIR must consider whether granting immunity from prosecution would be compatible with convention rights, comply with the constitutional principle of the rule of law, and satisfy the interests of justice.

Reason

Clause 33 prohibits any criminal prosecution or investigation of a Troubles-related offence being started or continued after a certain date and any criminal enforcement action against any person in respect of the offence unless a prosecution had begun before that date (clauses 33(1) and (2) and 37(3)).

These provisions would have the effect of removing certain persons’ civil and criminal liability for their actions and prevent victims from obtaining any legal remedy. They also prevent the police and the Lord Advocate from investigating and the courts from adjudicating such deaths.

Paragraph 181 [Guide on Article 2 - Right to life \(coe.int\)](#) The European Court of Human Rights Court has considered that granting an amnesty in respect of the killing or ill-treatment of civilians would run contrary to the State’s obligations under Articles 2 and 3 of the Convention since it would hamper the investigation of such acts and necessarily lead to impunity for those responsible (Marguš v. Croatia [GC], § 127).

The Government should explain how these proposals, which appear to depart from the constitutional principle of the rule of law, be incompatible with ECHR and contrary to the interests of justice, can be justified.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 18, page 16, line 31 leave out “C” and insert “D”

Effect

Consequential amendment.

NORTHERN IRELAND (LEGACY AND RECONCILIATION) EFFECTS AND REASONS

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 22, page 20, line 24 leave out “may” and insert “must”

Effect

This probing amendment requires the Commissioner for Investigations to inform prosecutors of any evidence of an offence by a named person which come to light during an investigation.

Reason

Clause 22 (2) provides that “The Commissioner for Investigations may refer relevant conduct to a prosecutor if the Commissioner considers that there is evidence that the relevant conduct constitutes an offence by an individual whose identity is known to the Commissioner (a “suspected offence”)”.

We are concerned that the Commissioner for Investigations is not obliged to inform a prosecutor if the Commissioner considers that there is evidence that a crime has been committed by a known person. Withholding such information which could lead to the prosecution of those responsible for a crime would appear to be contrary to Article 2 (Right to Life) of the ECHR. As the Guide on Article 2 of the European Convention on Human Rights [Guide on Article 2 - Right to life \(coe.int\)](#) states in Paragraph 1.B “Having regard to its fundamental character, Article 2 of the Convention also contains a procedural obligation to carry out an effective investigation into alleged breaches of its substantive limb (*Armani Da Silva v. the United Kingdom*.”. The following paragraphs from the decision in *Armani Da Silva v. the United Kingdom* are relevant:

“233. In order to be “effective” as this expression is to be understood in the context of Article 2 of the Convention, an investigation must firstly be adequate (see *Ramsahai and Others*, cited above, § 324, and *Mustafa Tunç and Fecire Tunç*, cited above, § 172). This means that it must be capable of leading to the establishment of the facts, a determination of whether the force used was or was not justified in the circumstances and of identifying and – if appropriate – punishing those responsible (see *Giuliani and Gaggio*, cited above, § 301, and *Mustafa Tunç and Fecire Tunç*, cited above, § 172). This is not an obligation of result, but of means (see *Nachova and Others v. Bulgaria* [GC], nos. [43577/98](#) and [43579/98](#), § 160, ECHR 2005-VII; *Jaloud v. the Netherlands* [GC], no. [47708/08](#), § 186, ECHR 2014; and *Mustafa Tunç and Fecire Tunç*, cited above, § 173)...

257. Although the authorities should not, under any circumstances, be prepared to allow life-endangering offences to go unpunished, the Court has repeatedly stated that the investigative obligation under Article 2 of the Convention is one of means and not result.”

The Government should explain how the discretionary power given to the Commissioner for Investigations complies with Article 2.

NORTHERN IRELAND (LEGACY AND RECONCILIATION) EFFECTS AND REASONS

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 33, page 26, line 41 leave out “continued or”

Effect

This probing amendment deletes “continued or” from clause 33(1)

Reason

Clause 33(1) provides that “On and after the day on which this section comes into force, no criminal investigation of any Troubles-related offence may be continued or begun.”.

This means that criminal investigations in process when Clause 33 come into force must be stopped. This would appear to be contrary to ECHR Article 2 (Right to Life).

As the Guide on Article 2 of the European Convention on Human Rights [Guide on Article 2 - Right to life \(coe.int\)](#) states in Paragraph 1.B “Having regard to its fundamental character, Article 2 of the Convention also contains a procedural obligation to carry out an effective investigation into alleged breaches of its substantive limb (*Armani Da Silva v. the United Kingdom*.”. The following paragraphs from the decision in *Armani Da Silva v. the United Kingdom* are relevant:

“233. In order to be “effective” as this expression is to be understood in the context of Article 2 of the Convention, an investigation must firstly be adequate (see *Ramsahai and Others*, cited above, § 324, and *Mustafa Tunç and Fecire Tunç*, cited above, § 172). This means that it must be capable of leading to the establishment of the facts, a determination of whether the force used was or was not justified in the circumstances and of identifying and – if appropriate – punishing those responsible (see *Giuliani and Gaggio*, cited above, § 301, and *Mustafa Tunç and Fecire Tunç*, cited above, § 172). This is not an obligation of result, but of means (see *Nachova and Others v. Bulgaria* [GC], nos. [43577/98](#) and [43579/98](#), § 160, ECHR 2005-VII; *Jaloud v. the Netherlands* [GC], no. [47708/08](#), § 186, ECHR 2014; and *Mustafa Tunç and Fecire Tunç*, cited above, § 173)...

257. Although the authorities should not, under any circumstances, be prepared to allow life-endangering offences to go unpunished, the Court has repeatedly stated that the investigative obligation under Article 2 of the Convention is one of means and not result..”

The Government should explain how this prohibition of ongoing investigations complies with the rule of law, as analyses by Lord Bingham, who in *The Rule of Law* identified that “The law must afford adequate protection to fundamental rights.”

The Government should explain how clause 33(1) complies with Article 2 ECHR and the constitutional principle of the rule of law.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 37, page 28 line 9 leave out “or continued”

Effect

This amendment is consequential on the preceding amendment.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 38, page 28, line 35

leave out subsection (1)

Effect

This probing amendment deletes clause 38(1) from the bill.

Reason

Clause 38(1) provides, “A relevant Troubles-related civil action that was brought on or after the day of the First Reading in the House of Commons of the Bill for this Act may not be continued on and after the day on which this section comes into force.”.

A “relevant Troubles-related civil action” is a civil court action which arises out of Troubles-related conduct and is based on a civil wrong under tort (in England Wales and Northern Ireland), delict or fatal accident legislation (in Scotland) or equivalent foreign law grounds; and is subject to a time limit under the laws listed in subsection 38(6).

This provision may not comply with Article 2 ECHR -- The European Court of Human Rights has considered that “the State’s obligation to set up a judicial system capable of providing “appropriate redress” for the purposes of Article 2 required a remedy that would have enabled him - as the only family member and his deceased brother’s sole heir, with whom he had enjoyed a close relationship - to claim compensation for the non-pecuniary damage that the applicant may have sustained (Vanyo Todorov v. Bulgaria, § 66)” [Guide on Article 2 - Right to life \(coe.int\)](#).

The Government should explain how retrospective legislation such as contained in clause 38(1) which purports to stop valid court actions which are in process complies with the constitutional principle of the rule of law and the UK’s obligations under the ECHR.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 38, page 28, line 39

leave out “on or after” and insert “three years after”

Effect

This probing amendment ensures that a Troubles related civil action can be brought up to three years after the coming into force of clause 38.

Reason

Clause 38(2) provides that “A relevant Troubles-related civil action may not be brought on or after the day on which this section comes into force”. This amounts to a new limitation on the raising of court actions which supplants the existing provisions under the various limitations laws applicable in the UK which are listed in clause 38(6).

We consider that this may be contrary to Article 2 ECHR. Accordingly, we propose that there should be a period of three years from the coming into force of Clause 38 in which such court actions may be raised. This follows the precedent set in Section 18 of the Prescription and Limitation (Scotland) Act 1973 which provides that: “(2) Subject to subsections (3) and (4) below and section 19A of this Act, no action to which this section applies shall be brought unless it is commenced within a period of 3 years after — (a)the date of death of the deceased...”

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 38, page 29, line 21 leave out subsection (7)

Effect

This amendment is consequential upon the previous amendment.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 38, page 29, line 27 leave out “(1) or”

Effect

This amendment is consequential upon the previous amendment.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 38, Page 29, line 27 leave out “continued or”

Effect

This amendment is consequential upon a previous amendment.

NORTHERN IRELAND (LEGACY AND RECONCILIATION) EFFECTS AND REASONS

AMENDMENT TO BE MOVED IN COMMITTEE

Schedule 1, paragraph 6, page 48, line 34 leave out “Secretary of State” and
insert “The Northern Ireland Judicial
Appointments Commission”

Effect

This and subsequent probing amendments remove the Secretary of State from various roles in connection with the appointment and holding office of Commissioners.

Reason

The Government argues that its obligations under that Article 2 ECHR would be met by its proposals for the Independent Commission for Reconciliation and Information Recovery (ICRIR). However, the Commissioners are appointed by the Secretary of State who determines their terms and conditions. Nothing is said about how long Commissioners hold office – they continue until they resign (Schedule 1, para 9). Furthermore, there is no provision for pension rights but there is provision for compensation payments when they cease office but only at the discretion of the Secretary of State (Schedule 1 para 9(3)).

This and subsequent amendments remove the Secretary of State from various roles in connection with the appointment and holding office of Commissioners. The replace the Secretary of State with the Northern Ireland Judicial Appointments Commission (NIJAC).

NIJAC’s functions include to select and appoint and recommend for appointment to judicial offices up to and including High Court Judge, to recommend applicants on the basis of merit, to engage in a Programme of Action to secure, that appointments to judicial offices reflect of the community in Northern Ireland equip it well for setting terms of appointment and pay and dealing with the resignation of Commissioners.

Accordingly, NIJAC is accustomed to appointing those who fulfil statutory requirements and are of good character and have integrity. Furthermore, the link between the ICRIR and the judiciary is embedded in the bill as the Chief Commissioner must be a person who holds or has held high judicial office. In our view NIJAC would provide the requisite level of independence to fulfil the statutory requirements under the bill in relation to ICRIR.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Schedule 1, paragraph 7, page 48, line 37 leave out “Secretary of State” and
insert “The Northern Ireland Judicial
Appointments Commission”

Effect

This amendment is consequential upon the related amendment.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Schedule 1, paragraph 7, page 48, line 37

leave out “Secretary of State”
and insert “the Northern Ireland
Judicial Appointments Commission

Effect

This amendment is consequential upon the related amendment.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Schedule 1, paragraph 9, page 50, line 33, leave out “Secretary of State” and
insert “The Northern Ireland Judicial
Appointments Commission”

Effect

This amendment is consequential upon the related amendment.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Schedule 1, paragraph 9, page 50, line 37, leave out “Secretary of State” and
insert “The Northern Ireland Judicial
Appointments Commission”

Effect

This amendment is consequential upon the related amendment.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Schedule 1, paragraph 9, page 50, line 38, leave out Secretary of State and
insert “The Northern Ireland Judicial
Appointments Commission”

Effect

This amendment is consequential upon the related amendment.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Schedule 1, paragraph 9, page 50, line 39, leave out Secretary of State and
insert “The Northern Ireland Judicial
Appointments Commission”

Effect

This amendment is consequential upon the related amendment.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Schedule 1, paragraph 10, page 51, line 2, leave out “Secretary of State” and
insert “The Northern Ireland Judicial
Appointments Commission

Effect

This amendment is consequential upon the related amendment.

**NORTHERN IRELAND (LEGACY AND RECONCILIATION)
EFFECTS AND REASONS**

AMENDMENT TO BE MOVED IN COMMITTEE

Clause 51, page 39, line 28

leave out subsection (8).

Effect

This amendment deletes clause 51(8).

Reason

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

This subsection is therefore designed to bring clarity to the bill by enabling the Secretary of State to change various clauses to “enable a person reading the Bill to have a clear idea of whether the provision is currently in force”. This raises the question which the Government should be able to answer: why not ensure that the bill is clear from the start rather than require subsequent amendment to introduce clarity? The Government should amend the provisions to which clause 51(8) refers and obviate the need for this regulation making power.