



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Advice on the Northern Ireland
Troubles Bill**

March 2026

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Summary of Recommendations

The Northern Ireland Human Rights Commission:

- 2.8 recommends that the Explanatory Notes to the Bill are revised to address Windsor Framework Article 2, in line with Cabinet Office guidance.**
- 2.9 recommends that the Human Rights Memorandum to the Bill should be expanded to include detailed consideration of compliance of the Bill with Windsor Framework Article 2, including relevant EU minimums standards. This should include reviewing all provisions of relevant EU law engaged under Windsor Framework Article 2, including EU law which underpins relevant ECHR rights.**
- 3.5 advises that the NI Office should reconsider whether the process should involve NI Judicial Appointments Commission and if satisfied that it should not, the NI Office should provide reasons and at least include an indicative list of 'relevant persons' who the Secretary of State will consult before making a judicial panel member appointment.**
- 4.3 recommends that the proposed disclosure regime is critically assessed when current appeals are concluded. The Legacy Commission should be appropriately resourced and staffed to ensure sound, prudent and independent decision making relating to the disclosure of information.**
- 5.4 recommends that Clause 21 be amended to provide that the Regulations about the holding and handling of information by the Legacy Commission are subject to the affirmative procedure.**
- 5.5 recommends that Regulations made under Clause 21 be scrutinised to ensure victims and family members are provided with all information required under the EU Victims Directive, particularly under Articles 1, 4 and 6.**

- 6.3 recommends that the NI Office provide further information to support the assessment in the ECHR memorandum that Clause 22 will be considered compatible with ECHR Article 8.**
- 6.6 recommends that the Secretary of State specify how the regulations concerning the retention of preserved material will provide sufficient detail on the criteria used to arrive at the specified periods for retention of biometric data in order to ensure compliance with the rules on handling, storing and destruction of personal data, including special categories of personal data, in the EU Law Enforcement Directive.**
- 6.8 recommends that the Secretary of State set out in regulations relevant safeguards to ensure that data retained by other bodies for the exercise of Legacy Commission functions will be protected and ring-fenced for that purpose.**
- 6.9 recommends that Clause 22 be amended to provide that the Regulations about retention of biometric data for the purposes of Legacy Commission functions are subject to the affirmative procedure.**
- 7.2 advises that Clause 24 is amended to include a requirement that the review of the performance of Legacy Commission functions include an assessment of compliance with human rights obligations.**
- 8.2 recommends that the NI Office provide an indicative list of mandatory consultees, which the Secretary of State for NI must consult before making regulations to wind up the Legacy Commission.**
- 9.4 advises that the definition of serious physical or mental harm provided at Clause 27(3) of the Bill is reviewed to**

ensure it fully encompasses the range of serious physical and mental harm experienced by victims of the troubles.

10.2 advises that the individual appointed under Clause 26 to conduct an independent review of the performance of Legacy Commission functions should be required to consider how this provision has been applied in practice.

11.4 recommends that the Bill is amended to require that guidance is issued on the nature of information to be provided to victims and family members in line with the right to information in the EU Victims Directive, particularly under Articles 1, 4, 6 and 11.

12.2 recommends that the Bill is amended to require that victims and family members are provided with information on whether or not their case is being referred to the Director of Public Prosecutions, including reasons for that decision.

13.3 recommends that, for the avoidance of doubt, the Bill is amended to require that eligible victims and family members be notified of the need to make an application if they wish to be designated as a 'core participant' in proceedings.

14.3 recommends that the Secretary of State provides an assurance that victims and their family members will have access to appropriate support and specialist services in line with the minimum standards in the EU Victims' Directive.

15.3 advises that the timeframe to make a request should be extended.

16.4 recommends that, to ensure effective participation, the definition of close family members provided at Clause 93 should be extended to include grandchildren.

1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (NIHRC), pursuant to section 69(1) of the Northern Ireland (NI) Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in NI. The NIHRC is also required, under section 78A(1) to monitor the implementation of Article 2(1) of the Windsor Framework to ensure there is no diminution of the rights protected in the 'Rights, Safeguards and Equality of Opportunity' chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK's withdrawal from the EU.¹ In accordance with these functions, the NIHRC provides the following advice on the Northern Ireland (NI) Troubles Bill.
- 1.2 The NIHRC welcomes the introduction of the NI Troubles Bill. The NIHRC provides this advice to assist in the development of legislation that is victim-centred, provides for effective investigation and prosecution of alleged unlawful killings and serious injuries so as to be compatible with Articles 2 (right to life) and 3 (freedom from torture) of the ECHR. The legislation must also comply with the requirements of Windsor Framework Article 2 and relevant EU minimum standards including the EU Victims' Directive² and the EU Law Enforcement Directive.³ This advice addresses both, equally important and interdependent, frameworks.

2.0 Windsor Framework Article 2 and Material Supporting the Bill

- 2.1 The NIHRC welcomes the publication of the Human Rights Memorandum accompanying the Bill but is disappointed that there is no consideration of or reference to Windsor Framework Article 2.⁴

¹ The Windsor Framework was formerly known as the Protocol on Ireland/Northern Ireland to the to the Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the EAEC, 24 January 2020 (UK-EU Withdrawal Agreement). All references to the Protocol in this document have been updated to reflect this change (see Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework).

² Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

³ Directive 2016/680/EU, 'EU Parliament and Council Directive on the Protection of Natural Persons with Regard to the Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties, and on the Free Movement of Such Data', 27 April 2016.

⁴ NI Office, 'NI Troubles Bill – European Convention on Human Rights Memorandum' (NIO, 2015).

- 2.2 Updated guidance on making legislation was issued by the Cabinet Office in February 2025 stating that “the Government’s obligations under [Windsor Framework] Article 2 must be considered when departments promote any primary, or make any secondary legislation that applies in NI”.⁵ Therefore, as the guidance states, the Legal Background section of the Explanatory Notes should set out obligations relating to Windsor Framework Article 2.⁶
- 2.3 The Explanatory Notes on the Bill refer only to those findings of the NI Court of Appeal that relate to the ECHR.⁷ The Legal Background section records that a declaration of incompatibility was made under Section 4 of the Human Rights Act 1998 in respect of a number of provisions of the NI Troubles (Legacy and Reconciliation) Act 2023 and that certain findings of the NI Court of Appeal are subject to appeal in the UK Supreme Court.⁸
- 2.4 The NI Court of Appeal, when considering Windsor Framework Article 2, also held that the rights of victims of crime are within the scope of the relevant chapter in the Belfast (Good Friday) Agreement and are promoted and given effect by civil rights available to all victims of crime, including Articles 2 (right to life), 3 (freedom from torture), 6 (right to a fair trial) and 14 (prohibition of discrimination) of the ECHR.⁹ The Court further held that those rights are particularised to some extent and enhanced by the EU Victims’ Directive,¹⁰ specifically including the right to a review of a decision not to prosecute, and that the Directive should be interpreted in accordance with the EU Charter of Fundamental Rights and general principles of EU law.¹¹ The NI Court of Appeal

⁵ Cabinet Office, ‘Guide to Making Legislation 2025’ (CO,2025), at para 12.5.

⁶ Ibid, at para 10.53.

⁷ House of Commons, ‘Northern Ireland Troubles Bill – Explanatory Notes’ (HC, 2025). These Notes relate to the NI Troubles Bill as introduced to the House of Commons on 14 October 2025 (Bill 310 EN 2024-26).

⁸ The UK Supreme Court heard the appeal on 14-16 October 2025 and judgment is awaited. See UKSC/2025/0013 - *In the Matter of an Application by Martina Dillon and Others* available at: <https://www.supremecourt.uk/cases/uksc-2025-0013>; *Martina Dillon and Others v Secretary of State for NI* [2024] NICA 59; *In the Matter of an Application by Martina Dillon and Others* [2024] NIKB 11.

⁹ *Martina Dillon and Others v Secretary of State for NI* [2024] NICA 59, at paras 115-117.

¹⁰ Directive 2012/29/EU, ‘EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012. Other EU obligations in the area of criminal justice include Directive 2011/36/EU ‘EU Council Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’, 5 April 2011; Directive 2011/92/EU, ‘EU Parliament and Council Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography’, 13 December 2011; Directive 2004/80/EC, ‘EU Council Directive Relating to the Compensation to Crime Victims’, 29 April 2004.

¹¹ *Martina Dillon and Others v Secretary of State for NI* [2024] NICA 59, at para 119 and 126. See also *Secretary of State for Work and Pensions v AT* [2023] EW CA Civ 1307, at para 92; Tobias Lock, Eleni Frantziou and Anurag

held that several provisions of the 2023 Act were incompatible with the EU Victims' Directive and therefore in breach of Windsor Framework Article 2.¹²

- 2.5 The NI Court of Appeal held that the Rights, Safeguards and Equality of Opportunity chapter in the Belfast (Good Friday) Agreement consists of a "broad suite of rights" and extends "further than those rights specifically listed".¹³ The NIHRC considers that the full range of rights in the ECHR, to the extent that they are underpinned by EU law in force in NI on or before 31 December 2020, fall within the scope of the non-diminution commitment in Windsor Framework Article 2.¹⁴
- 2.6 Despite the fact that compliance with Windsor Framework Article 2 is central to many of the UK Government's grounds of appeal from the Court of Appeal judgment in the *Dillon* case,¹⁵ there is no reference to this obligation or consideration of relevant EU minimum standards, including the EU Victim's Directive, in the Explanatory Notes.¹⁶ This is an oversight which needs to be corrected or explained.
- 2.7 In addition, the Commission has for some years contended that, as a domestically incorporated treaty obligation, the UK Government's analysis of Windsor Framework Article 2 compliance should be included in an expanded Human Rights Memorandum accompanying a Bill. The lack of published analysis of compliance with Windsor Framework Article 2 was raised recently by the House of Lords NI Scrutiny Committee which wrote to the Home Office regarding the

Deb, 'The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework' (NIHRC, 2024).

¹² The NI Court of Appeal disagreed with the NI High Court of Justice that a breach of an ECHR right was equivalent to a breach of an EU Charter right and would therefore breach Windsor Framework Article 2. The NI Court of Appeal found that the disapplication of sections 8 and 43(1) of the NI Troubles (Legacy and Reconciliation) Act 2023 was based on EU Charter rights alone and could not stand. See *Martina Dillon and Others v Secretary of State for NI* [2024] NICA 59, at paras 137, 161, 608 and 710.

¹³ *Martina Dillon and Others v Secretary of State for NI* [2024] NICA 59, at para 115.

¹⁴ NI Human Rights Commission, 'Annual Statement 2025 – Human Rights in NI' (NIHRC, 2025), chapter 5; NI Human Rights Commission and Equality Commission for NI, 'Annual Report of the NI Human Rights Commission and the Equality Commission for NI on the Implementation of Article 2 of the Windsor Framework 2022–2023' (NIHRC and ECNI, 2023), at para 4.84. See also the Court of Appeal in NI confirming that "the trial judge was right to identify that victims' rights are promoted and given effect by civil rights available to all victims of crime, including Articles 2, 3, 6 and 14 [of the ECHR]". See *Martina Dillon and Others v Secretary of State for NI* [2024] NICA 59, at 117.

¹⁵ See *In the Matter of an Application by Martina Dillon and Others*: UKSC/2025/0013. Written submissions available on the website of the Supreme Court at: <https://www.supremecourt.uk/cases/uksc-2025-0013>.

¹⁶ House of Commons, 'Northern Ireland Troubles Bill – Explanatory Notes' (HC, 2025). These Notes relate to the NI Troubles Bill as introduced to the House of Commons on 14 October 2025 (Bill 310 EN 2024-26).

Crime and Policing Bill on 18 September 2025, seeking the Government's analysis.¹⁷ This was raised again on 5 November 2025 challenging the response received to the first letter,¹⁸ enquiring about the basis for the Government's conclusion that the provisions in question are compliant and asking "why is it not government policy to publish this analysis so that it can be considered by Parliament and the public?"¹⁹ In response the Home Office Minister stated that the UK Government "respectfully disagrees" with the decision of the NI High Court that the reference to civil rights in the Belfast (Good Friday) Agreement should be interpreted broadly, but nevertheless provides analysis of Windsor Framework Article 2. This analysis sets out the Government's basis for concluding that there would be no diminution of rights in this instance. In particular the Minister states that the explanation provided in the letter should be read together with the ECHR memorandum published alongside the Bill to demonstrate that these matters have been given due consideration.²⁰

- 2.8 The NIHRC recommends that the Explanatory Notes to the Bill are revised to address Windsor Framework Article 2, in line with Cabinet Office guidance.**
- 2.9 The NIHRC recommends that the Human Rights Memorandum to the Bill should be expanded to include detailed consideration of compliance of the Bill with Windsor Framework Article 2, including relevant EU minimums standards. This should include reviewing all provisions of relevant EU law engaged under Windsor Framework Article 2, including EU law which underpins relevant ECHR rights.**

¹⁷ Letter from the Chair of the NI Scrutiny Committee, Lord Carlile of Berriew to the Minister of State in the Home Office, Lord Hanson of Flint, 18 September 2025.

¹⁸ Letter from the Minister of State in the Home Office, Lord Hanson of Flint to the Chair of the NI Scrutiny Committee, Lord Carlile of Berriew, 17 October 2025.

¹⁹ Letter from the Chair of the NI Scrutiny Committee, Lord Carlile of Berriew to the Minister of State in the Home Office, Lord Hanson of Flint, 5 November 2025.

²⁰ Letter from the Minister of State in the Home Office, Lord Hanson of Flint to the Chair of the NI Scrutiny Committee, Lord Carlile of Berriew, 26 November 2025.

3.0 Clause 6: Judicial Panel Members

- 3.1 Clause 6(1) provides for the Secretary of State to appoint persons to be members of the judicial panel. Judicial panel members will oversee inquisitorial proceedings provided for by part 4 of the Bill.
- 3.2 Judicial panel members must have held high judicial office within the meaning of Part 3 of the Constitutional Reform Act 2005. The Secretary of State must appoint one of the judicial panel members as the senior judicial panel member, who will then allocate inquisitorial proceedings to a judicial panel member.²¹
- 3.3 The Secretary of State must consult with 'relevant persons' (currently unidentified) before making the appointments (from a list of relevant persons published in advance by the Secretary of State).²²
- 3.4 The NIHRC notes a departure from the ordinary process for judicial appointments in NI through the NI Judicial Appointments Commission. The justification for this departure has not been fully explained.
- 3.5 **The NIHRC advises that the NI Office should reconsider whether the process should involve NI Judicial Appointments Commission and if satisfied that it should not, the NI Office should provide reasons and at least include an indicative list of 'relevant persons' who the Secretary of State will consult before making a judicial panel member appointment.**

4.0 Clause 17: Disclosure of Information

- 4.1 The Bill provides the Secretary of State with extensive power to restrict the disclosure of information in the reports of the Legacy Commission and the Independent Commission on Information Retrieval.²³ Schedule 5 sets out the procedure for the Legacy Commission to propose the disclosure of sensitive information in its

²¹ Clause 6 and 50, NI Troubles Bill.

²² Clause 6 and 9, NI Troubles Bill.

²³ Clause 17, 72(2)-77, Schedule 4 and 5, NI Troubles Bill.

reports and for the Secretary of State to prohibit such disclosures, in certain circumstances. A decision by the Secretary of State to prohibit the disclosure of sensitive information may be appealed by the Legacy Commission or by those who requested the investigation. Decisions by the Legacy Commission relating to the inclusion of sensitive information in reports and, where necessary, to challenge attempts to prohibit the disclosure of sensitive information, will have a significant impact upon levels of confidence in the Legacy Commission.

4.2 Articles 2 and 3 of the ECHR require the UK Government to ensure that the Secretary of State's influence and involvement in the Legacy Commission does not undermine its effectiveness, independence and impartiality.²⁴ Previously, the NIHRC advised that the disclosure provisions contained in the Legacy Act 2023 undermined the independence of the Independent Commission for Reconciliation and Information Recovery.²⁵ It is welcomed that the disclosure regime provided in the Bill is different to the 2023 Act in a number of key areas. However, ultimately, whether the new regime is compatible with Articles 2 and 3 will have to be assessed when the provisions are finalised and any Regulations are drafted.

4.3 **The NIHRC recommends that the proposed disclosure regime is critically assessed when current appeals are concluded.²⁶ The Legacy Commission should be appropriately resourced and staffed to ensure sound, prudent and independent decision making relating to the disclosure of information.**

²⁴ *Kamalak v Turkey* (2013), Application No 2251/11, Judgment of 8 October 2013, at para 31; CCPR/C/GC/36, 'UN Human Rights Committee General Comment No 36: Right to Life', 30 October 2018, at para 28; *Ergi v Turkey* (1998), ECHR 59, at paras 83-84; *Hugh Jordan v UK* (2001) ECHR 327, at para 120; *McKerr v UK* (2001) ECHR 329, at para 128.

²⁵ NI Human Rights Commission, 'Legislative Scrutiny: NI Troubles (Legacy and Reconciliation) Bill' (NIHRC, 2022)

²⁶ See also: UN Special Rapporteurs Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, communication on UK and Ireland Joint Framework, 30 October 2025; OL GBR 18/2025, page 9.

5.0 Clause 21: Regulations about the Holding and Handling of Information

- 5.1 The Bill makes broad provision for the Secretary of State to make regulations about the holding and handling of information by the Legacy Commission, subject to the negative procedure. The Secretary of State may use such regulations to take additional powers or to confer additional functions on others (subsection (2)(e)). Such regulations may also address matters such as the transfer and destruction of information and notifications to be given by the Legacy Commission about information held.
- 5.2 Regulations dealing with notification are important and must comply with minimum standards under the EU Victims' Directive which provides for the rights of victims of crime and their family members, including as regards information and participation.²⁷ The victim of a criminal offence has a right to receive information enabling them to know details of the criminal proceedings, including any decision not to proceed with or to end an investigation or not to prosecute the offender.²⁸ This information should be provided in "sufficient detail" to ensure that "victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings".²⁹ The EU Victims' Directive should be interpreted in accordance with the EU Charter of Fundamental Rights and general principles of EU law, including the right to an effective remedy and to a fair trial.³⁰
- 5.3 Given the significance of the powers to be exercised, the NIHRC considers that it would provide a more effective safeguard if the Regulations were subject to the affirmative procedure.
- 5.4 **The NIHRC recommends that Clause 21 be amended to provide that the Regulations about the holding and handling of information by the Legacy Commission are subject to the affirmative procedure.**

²⁷ Article 1 and Recital 19, Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

²⁸ Article 6, Ibid.

²⁹ Recital 36, Ibid.

³⁰ *Martina Dillon and Others v Secretary of State for NI* [2024] NICA 59, at para 126. See Article 47 of the EU Charter of Fundamental Rights.

5.5 **The NIHRC recommends that Regulations made under Clause 21 be scrutinised to ensure victims and family members are provided with all information required under the EU Victims Directive, particularly under Articles 1, 4 and 6.**

6.0 Clause 22: Biometric Material

6.1 The law of NI relating to the retention of fingerprints and DNA profiles is currently being reformed to ensure compliance with the ECHR, Article 8. The Bill at Clause 22 exempts (in effect) the collection of a snapshot of biometric material for use by the Legacy Commission from the proposed retention regime, along with other legal obligations relating to the destruction of fingerprints and DNA profiles. The justification for the departure is unclear and unlikely to be justified on ECHR grounds.

6.2 It is noted that under Clause 22(2), regulations, subject to the negative procedure, will require the Legacy Commission to conduct periodic reviews of the need to retain the material. This does not appear to allow for categorisation of material based on the seriousness of the offence to be reviewed to assess the necessity of their continued retention. In the absence of such provision there is a real risk that the Clause would be found to be incompatible with Article 8 of the ECHR.

6.3 **The NIHRC recommends that the NI Office provide further information to support the assessment in the ECHR memorandum that Clause 22 will be considered compatible with ECHR Article 8.**

6.4 The NIHRC considers that EU data protection law is caught within the scope of Windsor Framework Article 2.³¹ The key EU law setting

³¹ NI Human Rights Commission and Equality Commission for NI, 'Annual Report on the Implementation of Article 2 of the Windsor Framework 2023–2024' (NIHRC and ECNI, 2025). See also NI Human Rights Commission, 'Briefing on the Data (Use and Access) Bill [HL]' (NIHRC, 2025); NI Human Rights Commission, 'Briefing to NI Assembly Committee for Justice on Justice Bill 07/2022-2027' (NIHRC, 2024). Biometric data is personal data that relates to an individual and allows for the identification of that individual. Article 4(14), Regulation 2016/679/EU, 'EU Parliament and Council Regulation on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data' (EU GDPR), 27 April 2016. The protection of personal data, including biometric data, is a fundamental human right and a key component of the right to privacy, enshrined in Article 8 of the ECHR. See *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* (2015) ECHR 713, at para 137

standards for biometric data protection in this area is the EU Law Enforcement Directive,³² which must be read in light of the EU Charter of Fundamental Rights.³³ Data controllers are required under the EU Law Enforcement Directive to ensure that both the storage and period of storage of personal data are limited to “what is necessary for the purposes for which those data are stored”.³⁴ Member States should ensure that the personal data collected must be adequate, relevant and not excessive in relation to the purposes for which it is processed.³⁵ The Court of Justice of the European Union (CJEU) has held that indefinite retention of biometric data is contrary to EU law.³⁶

6.5 The EU Directive places a duty on the Member States to set appropriate time limits for the storage of biometric data or for periodic reviews assessing the need to continue storing the data.³⁷ The Directive also sets out the principles relating to the processing of personal data, including that the further processing must satisfy two conditions: it should be done in accordance with EU law or Member State law; and it must be necessary and proportionate to the purpose of the processing.³⁸

6.6 **The NIHRC recommends that the Secretary of State specify how the regulations concerning the retention of preserved material will provide sufficient detail on the criteria used to arrive at the specified periods for retention of biometric data in order to ensure compliance with the rules on handling, storing and destruction of personal data, including special**

³² Directive 2016/680/EU, ‘EU Parliament and Council Directive on the Protection of Natural Persons with Regard to the Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties, and on the Free Movement of Such Data’, 27 April 2016.

³³ *Direktor na Glavna Direktsia „Natsionalna Politsia” Pri MVR – Sofia*, Case C-118/22, 30 January 2024. See also *Martina Dillon and Others v Secretary of State for NI* [2024] NICA 59, at para 117, 120 and 126; *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307, at para 113 and Tobias Lock, Eleni Frantziou and Anurag Deb, ‘The Interaction Between the EU Charter of Fundamental Rights and General Principles with the Windsor Framework’ (NIHRC, 2024).

³⁴ *Direktor na Glavna Direktsia „Natsionalna Politsia” Pri MVR – Sofia*, Case C-118/22, 30 January 2024, at para 52.

³⁵ *Direktor na Glavna Direktsia „Natsionalna Politsia” Pri MVR – Sofia* Case C-118/22, 30 January 2024, at para 41.

³⁶ *Direktor na Glavna Direktsia „Natsionalna Politsia” Pri MVR – Sofia*, Case C-118/22, 30 January 2024.

³⁷ Article 5, Directive 2016/680/EU, ‘EU Parliament and Council Directive on the Protection of Natural Persons with Regard to the Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties, and on the Free Movement of Such Data’, 27 April 2016.

³⁸ Article 4(2), *Ibid*. See also *VS v Inspektor v Inspektorata kam Visshia sadeben suvet* [2022], Case C-180/21, 8 December 2022, at para 51.

categories of personal data, in the EU Law Enforcement Directive.

- 6.7 The EU Law Enforcement Directive sets out the obligations of data controllers and processors and highlights that data protection should be incorporated by design and default, including that “by default personal data are not made accessible without the individual's intervention to an indefinite number of natural persons”.³⁹
- 6.8 **The NIHRC recommends that the Secretary of State set out in regulations relevant safeguards to ensure that data retained by other bodies for the exercise of Legacy Commission functions will be protected and ring-fenced for that purpose.**
- 6.9 **The NIHRC recommends that Clause 22 be amended to provide that the Regulations about retention of biometric data for the purposes of Legacy Commission functions are subject to the affirmative procedure.**

7.0 Clause 24: Independent Reports on the Legacy Commission's Performance of its Functions

- 7.1 The Bill in Clause 24 makes provision for the appointment of an independent person to carry out a review of the performance of the Legacy Commission functions. The prudent and efficient performance of the statutory functions afforded to the Legacy Commission is central to the state executing its obligations under Article 2 of the ECHR. The NIHRC notes that under clause 11 the Legacy Commission must exercise its functions in a manner consistent with a range of principles, one of which is respect for human rights. The NIHRC considers that it would be appropriate for the independent person to be required to consider efforts by the Legacy Commission to ensure compliance with its human rights obligations as part of the review.

³⁹ Article 19-28, Directive 2016/680/EU, 'EU Parliament and Council Directive on the Protection of Natural Persons with Regard to the Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties, and on the Free Movement of Such Data', 27 April 2016.

- 7.2 **The NIHRC advises that Clause 24 is amended to include a requirement that the review of the performance of Legacy Commission functions include an assessment of compliance with human rights obligations.**

8.0 Clause 25: Conclusion of the Legacy Commission's Work

- 8.1 Clause 25 provides that the Secretary of State for NI may wind up the Legacy Commission by regulations made under the affirmative procedure. Under Clause 25(6) the Secretary of State for NI must consult with 'required consultees' before making regulations to wind up the Legacy Commission. Clause 26(10) provides that 'required consultees' means the Legacy Commission, and 'any other persons the Secretary of State considers it appropriate to consult'. The Secretary of State for NI therefore has full discretion in determining who should be consulted when developing regulations to wind up the Legacy Commission.
- 8.2 **The NIHRC recommends that the NI Office provide an indicative list of mandatory consultees, which the Secretary of State for NI must consult before making regulations to wind up the Legacy Commission.**

9.0 Clause 27: Requests for Investigations by Family Members and Seriously Injured Persons

- 9.1 Clause 27(2) provides that an individual may request an investigation into conduct forming part of the Troubles, only if the conduct caused the individual to suffer serious physical or mental harm. Clause 27(3) defines "serious physical or mental harm" by way of a list of medical conditions.
- 9.2 The NIHRC advises that to limit the remit of the Legacy Commission's investigations under Article 3 of the ECHR to 'serious

physical or mental harm' is not in line with jurisprudence from the ECtHR.⁴⁰

- 9.3 A human rights-compliant approach requires flexibility to determine which circumstances fall under the investigatory body's remit. It is essential to consider the unique circumstances of each case and to adhere to Articles 2 and 3 of the ECHR.⁴¹ It is noted that clause 32 empowers the Director of Investigations to initiate investigations where it appears to the Directors that the investigation is necessary for the purposes of ECHR compatibility. This will provide an important protection. However, it would offer greater clarity to victims if the serious physical or mental harm they experienced was reflected in the wording of the Bill.
- 9.4 **The NIHRC advises that the definition of serious physical or mental harm provided at Clause 27(3) of the Bill is reviewed to ensure it fully encompasses the range of serious physical and mental harm experienced by victims of the troubles.**

10.0 Clause 36: Conduct of Investigations

- 10.1 Clause 36 relates to the conduct of investigations. Clause 36(8)(b) provides that the Directors of Investigations must (in particular) ensure that the Legacy Commission does not do anything which duplicates any aspect of a previous investigation unless, in the Director's view, the duplication is essential. The NIHRC considers that if interpreted restrictively this requirement could result in lines of enquiry not being fully explored.
- 10.2 **The NIHRC advises that the individual appointed under Clause 26 to conduct an independent review of the performance of Legacy Commission functions should be required to consider how this provision has been applied in practice.**

⁴⁰ Article 15(2), ECHR.

⁴¹ *Mursic v Croatia* (2016) ECHR 927, at para 97.

11.0 Clauses 33 and 37: Access to Information and Participation of Family Members in Investigations

11.1 The NIHRC welcomes the confirmation at Clause 33 that family members will be notified when a criminal investigation is initiated following a request from a public authority or on the initiative of the Legacy Commission. The requirement at Clause 37 that family members be kept informed when a decision is taken not to conduct a criminal investigation or where a subsequent decision is taken to initiate a criminal investigation, is also welcome. However, no further information is given about whether family members can request progress updates on that criminal investigation.

11.2 Clause 40 provides that ahead of the production of reports on the findings of investigations a draft must be provided to all relevant family members and allow for representations to be made ahead of publication. Clause 67 provides for eligible persons, including victims and family members, to make a personal statement on the conduct to which the investigation relates, the surrounding event and any death or serious physical or mental harm caused by that conduct. While these are important for the participation of victims and family members in investigations by the Legacy Commission, the effectiveness of this participation is predicated on access to adequate and appropriate information.

11.3 As noted above, the EU Victims' Directive requires that family members of a victim have the right to receive information enabling them to know the state of criminal proceedings.⁴² This information should be provided in "sufficient detail" to ensure that:

victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings. In this respect, information allowing the victim to know about the current status of any proceedings is particularly important. This is equally relevant for

⁴² Article 6 and Article 11, Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

information to enable a victim to decide whether to request a review of a decision not to prosecute.⁴³

- 11.4 **The NIHRC recommends that the Bill is amended to require that guidance is issued on the nature of information to be provided to victims and family members in line with the right to information in the EU Victims Directive, particularly under Articles 1, 4, 6 and 11.**

12.0 Clauses 43 and 61: Referral to Prosecutors

- 12.1 Where in the context of an investigation (Clause 43) or inquisitorial proceedings (Clause 61) the relevant Director of Investigations or Judicial Panel Member, respectively, finds evidence of relevant criminal conduct by a known individual, they may refer that matter to the Director of Public Prosecutions. The EU Victims' Directive requires that family members of a victim have the right to receive information enabling them to know the state of criminal proceedings and a right to a review of a decision not to prosecute.⁴⁴

- 12.2 **The NIHRC recommends that the Bill is amended to require that victims and family members are provided with information on whether or not their case is being referred to the Director of Public Prosecutions, including reasons for that decision.**

13.0 Clause 53: Core Participants

- 13.1 Clause 53 stipulates that a person may be designated as a core participant to inquisitorial proceedings only if they apply to be so designated; and that at least one close family member must be so designated if they apply.
- 13.2 The EU Victims' Directive provides that the moment that the complaint is made should be considered as falling within the context of criminal proceedings for the purposes of the EU Directive and this

⁴³ Recital 36, Ibid.

⁴⁴ Article 6 and Article 11, Ibid.

also includes where proceedings are initiated ex officio.⁴⁵ In addition, victim status is not dependent on whether an offender is “identified, apprehended, prosecuted or convicted”.⁴⁶ As inquisitorial proceedings may result in a referral to the Director of Public Prosecutions, due consideration should be taken of the rights afforded to victims and their family members under the EU Victims’ Directive, including rights to information in Articles 1, 4, 6 and 11. Article 2(2) provides that States may establish procedures to determine which family members have priority in relation to the exercise of rights in the Directive, however procedures to limit the number of family members who can benefit from the rights in the directive should take into account the individual circumstances of each case.

- 13.3 The NIHRC recommends that, for the avoidance of doubt, the Bill is amended to require that eligible victims and family members be notified of the need to make an application if they wish to be designated as a ‘core participant’ in proceedings.**

14.0 Clause 69: Duty to have Regard to Welfare of Witnesses

- 14.1 The Commission welcomes the provision in Clause 69 that there is a duty on the Directors of Investigations or relevant Judicial Panel Member to have regard to the welfare of any individual who gives evidence to, or otherwise participates in, the investigation or proceedings.
- 14.2 The EU Victims’ Directive provides that victims of crime should be “recognised and treated in a respectful, sensitive and professional manner without discrimination” and requires that victims of crime are “provided with sufficient access to justice”.⁴⁷ It further provides that in all contacts with a competent authority operating within the context of criminal proceedings and any service coming into contact

⁴⁵ Recital 22, Ibid.

⁴⁶ Recital 19, Ibid.

⁴⁷ Recital 9, Ibid.

with victims that the personal situation and immediate needs of the victim should be taken into account.⁴⁸

- 14.3 **The NIHRC recommends that the Secretary of State provides an assurance that victims and their family members will have access to appropriate support and specialist services in line with the minimum standards in the EU Victims' Directive.**

15.0 Clause 74: Requests by families for information

- 15.1 Clause 74(1) provides that where a person's death is within the remit of the Independent Commission on Information Retrieval (ICIR), a family member of the deceased may make a request to the ICIR for information about the death. Such a request must be made within the period of two years starting with commencement of the relevant provision. It is noted that the Secretary of State for NI may extend this timeframe by way of regulations.
- 15.2 Whilst the NIHRC appreciates the importance of ensuring the work of the ICIR is completed expeditiously, this timeframe may result in a number of requests from families being timed out.
- 15.3 **The NIHRC advises that the timeframe to make a request should be extended.**

16.0 Clause 93: Meaning of "Close Family Member"

- 16.1 Clause 27 provides that where a person's death was caused directly by conduct forming part of the Troubles an investigation of the conduct may be requested by a close family member of the deceased. The definition of 'close family', provided at Clause 93, is somewhat limited. However, Clause 27(1)(b) provides that if there are no close family members, a family member of the deceased may request an investigation. How this will operate in circumstances in which close family members cannot be traced or if there is a disagreement within the family is unclear. Noting the passage of time since a number of deaths arising from the conflict,

⁴⁸ Recital 9, Ibid.

the grandchildren of victims have often taken on a role in seeking effective investigations.

16.2 This definition will have implications across a range of areas, including the category of person who may request an investigation;⁴⁹ who will be notified if the investigation is initiated by a public authority or Directors of Investigations;⁵⁰ who is provided with information when a decision is taken not to conduct a criminal investigation;⁵¹ who will be notified about new inquisitorial proceedings;⁵² who is eligible to provide a personal statement to the Legacy Commission on the impact of the death or serious harm and related conduct;⁵³ and who is consulted on a report on the findings of an investigation.⁵⁴

16.3 The definition of family member in the EU Victims' Directive is defined more broadly than in Clause 93 and includes relatives in the direct line.⁵⁵ The Directive also provides that procedures may be established to limit the number of family members who may benefit from the rights in the Directive, however this should be the individual circumstances of each case.⁵⁶

16.4 **The NIHRC recommends that, to ensure effective participation, the definition of close family members provided at Clause 93 should be extended to include grandchildren.**

⁴⁹ Clause 27, NI Troubles Bill.

⁵⁰ Clauses 28 and 32, NI Troubles Bill.

⁵¹ Clause 37, NI Troubles Bill.

⁵² Clause 52, NI Troubles Bill.

⁵³ Clause 67, NI Troubles Bill.

⁵⁴ Clauses 40 and 64, NI Troubles Bill.

⁵⁵ Article 2 and Recital 19, Directive 2012/29/EU, 'EU Parliament and Council Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

⁵⁶ Article 2(2), Ibid.

Contact us

For queries: Colin.Caughey@nihrc.org and
Eilis.Haughey@nihrc.org

www.nihrc.org | info@nihrc.org | +44 (0)28 9024 3987
4th Floor, Alfred House, 19-21 Alfred Street, Belfast, BT2 8ED

