

Addendum to NIHRC Advice to the Northern Ireland Affairs Committee on 'The Legacy of the Troubles: A Joint Framework Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland', October 2025

NIHRC initial commentary on key clauses of the Northern Ireland Troubles Bill

Since the Commission's advice on the Joint Framework was provided to the Committee, in early October, the Northern Ireland Troubles Bill has been introduced in the House of Commons. The Commission broadly welcomes the Bill, which largely reflects the Joint Framework. This addendum to the Commission's advice on the Joint Framework highlights a number of specific clauses which the Committee may wish to consider. The Commission is continuing to examine the Bill and will be publishing its advice in due course.

Material supporting the Bill

The Commission notes that the Government has not published a memorandum addressing issues arising under the European Convention on Human Rights alongside the Bill. In addition, the Explanatory Notes published alongside the Bill include no reference to Windsor Framework Article 2. Paragraph 25 deals with 'Legal Background', making reference to the *Dillon* case and the fact that it remains before the UK Supreme Court. The findings and issues cited relate exclusively to the ECHR, despite the fact that compliance with Article 2 of the Windsor Framework is central to many of the grounds of appeal put by the UK Government to the Supreme Court.¹

The approach contrasts with the requirement under the revised 'Guide to Making Legislation,' published by the Cabinet Office, which states that the Explanatory Notes to primary legislation "should also set out in [the legal background] section of the notes any obligations relating to Article 2 of the Windsor Framework".²

¹ *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>.

² Guide to Making Legislation (Cabinet Office, 2025) at para 10.53.

The Commission recommends that the Explanatory Notes to the Bill be revised to address Article 2 of the Windsor Framework, in line with Cabinet Office guidance.

The Commission recommends that the ECHR memorandum to the Bill is published and that it should be expanded to include detailed consideration of compliance of the Bill with Article 2 of the Windsor Framework.

Clause 17: Disclosure of information

Clause 17 makes clear inter alia that a disclosure of information by the Legacy Commission must not be made if either the Legacy Commission has identified the information as sensitive information, or a relevant public authority has notified the Legacy Commission that the information has been identified as sensitive information. Sensitive information is defined as 'information which, if disclosed generally, would risk damaging, or would damage, the national security interests of the United Kingdom.' Schedule 5 to the Bill sets out arrangements for a decision of the Secretary of State NI relating to the disclosure of sensitive information to be appealed. However, it is not clear from the Bill how a decision of the Legacy Commission to designate information as sensitive information may be challenged. In addition, it is unclear how a victim, or the family of a victim, will be informed about the decision not to disclose sensitive information.

The Committee will be familiar with a number of legal challenges relating to the disclosure of sensitive information on investigations into conflict related deaths.

The Committee may wish to explore how a victim or their family may challenge a decision by the Legacy Commission to identify information as sensitive information.

Clause 21: Regulations about the holding and handling of information

Clause 21 provides that the Secretary of State may by regulations make provision about the holding and handling of information by the Legacy Commission. The Regulations will make extensive provisions relating to the holding and handling of information. It is proposed that the Regulations are subject to the negative procedure.

Given that Regulations to be made under Clause 21 of the Bill may address matters such as notifications about information held and the destruction and transfer of information, their content will be important in considering compliance with Windsor Framework Article 2. Windsor Framework Article 2 is a UK Government commitment to ensure certain rights and safeguards will not be reduced in NI because of Brexit. The NI Court of Appeal has found that by virtue of Windsor Framework Article 2, the EU Victims' Directive³ continues to set minimum standards in NI.⁴ As outlined in our main submission at paragraph 2.18, the EU Victims' Directive provides for rights of victims of crime and their family members, including rights to information under Articles 1, 4 and 6.

The Commission considers that it would provide a more effective safeguard if the Regulations were subject to the affirmative procedure.

The Commission 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.

The Commission 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.

Clause 24: Independent Reports on the Legacy Commission's performance of its functions

Clause 24 makes provision for the appointment of an independent person to carry out a review of the performance of Legacy Commission functions. The Commission 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.

The Committee may wish to explore the inclusion of an express reference to human rights within clause 24.

³ Directive 2012/29/EU, 'EU Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012

⁴ *In the Matter of an Application by Martina Dillon and Others* [2024] NICA 59, at para [117] and [121]. The Supreme Court heard the UK Government's appeal in October 2025; judgment is pending at the time of writing - UKSC/2025/0013.

Clause 25: Conclusion of the Legacy Commission's work

The Commission has raised concerns regarding the power of the Secretary of State for NI to wind up the Legacy Commission (see paras 2.46 – 2.50). Clause 25 provides that the Secretary of State for NI may wind up the Legacy Commission by way of regulations 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.

The Commission appreciates that due to the passage of time it would be impractical to identify relevant consultees at this stage. However, to provide some clarity, the NIO could potentially publish an indicative list of consultees.

The Commission recommends that the Committee explore with the Northern Ireland Office whether an indicative list of mandatory consultees which the Secretary of State NI must consult before making regulations to wind up the Legacy Commission could be published.

Clause 26: Approach to assessing caseload

The Commission has highlighted the importance of the Legacy Commission having broad discretion to determine its own caseload. It is noted that clause 26(2) requires the Legacy Commission to publish a statement setting out how it will perform its investigatory functions. Under clause 28(5) the Chief Constable of the PSNI may request that the Legacy Commission carries out an investigation. The inclusion of this provision provides reassurance.

Clause 32 would empower the Directors of Investigations to initiate an investigation into harmful conduct forming part of the Troubles, where it appears to the Directors that the investigation is necessary for the purposes of ECHR compatibility. Clause 28 provides that "harmful conduct forming part of the Troubles" means conduct forming part of the Troubles that— (a) caused a person's death, or (b) caused a person to suffer physical or mental harm. Clause 35 provides that the

Directors of Investigations acting jointly must determine the order in which investigations are to be carried.

The Commission recommends that once established the Committee explore with the Legacy Commission how investigations and requests will be prioritised.

The Commission recommends that the statement to be made by the Legacy Commission under Clause 26 should be reviewed for compliance with minimum standards in the EU Victims Directive in relation to information and support to be provided to victims and family members.

Clause 27: Request for an investigation by a close family member & Clause 93: Meaning of “close family member”

The Commission has raised concerns regarding the definition of close family members (para 2.78). 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. Noting the passage of time since a number of deaths arising from the conflict the grandchildren of victims have often taken on a role in seeking effective investigations.

(See further commentary and recommendation on Clause 93 below.)

The Committee may wish to consider whether clause 27 and the definition of family is sufficiently broad to accommodate all circumstances in which a relative of a victim is seeking to ensure an effective investigation into the death of their family member.

Clause 33 – Notifying family members and others about new investigations.

The content of the notification to be made under Clause 33 is not specified, such as whether or not it will include progress updates as required under Clause 74(2) of the Bill. However, it is noted that subsequent Clauses provide for further requirements to communicate and publish reports.

Recital 26 of the EU Victims Directive states: "When providing information, sufficient detail should be given 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 information to enable a victim to decide whether to request a review of a decision not to prosecute."

The Commission recommends that the Committee establishes the nature of information that will be provided to victims and family members and satisfies itself that it will comply with relevant rights to information, including rights under Articles 1, 4, 6 and 11 of the EU Victims' Directive.

Clause 36 Conduct of Investigations

Clause 36 relates to the conduct of investigations. Clause 36(8)(b) provides that the Directors 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 Commission considers that if interpreted restrictively this requirement could result in lines of enquiry not being fully explored.

The Committee may wish to consider the practical impact of the requirement to avoid duplication on the conduct of investigations, in particular those investigations into complex or controversial conduct.

Clause 43 – Referral to prosecutors

Under Clause 43, if evidence is found of relevant criminal conduct by a known individual, the Director of Investigations may refer the conduct to the DPP and must specify the offence concerned.

The Commission recommends that the Committee enquire about criteria for referral to DPP.

The Commission recommends that the Committee seeks confirmation that information will be provided to victims and family members on whether their case is being referred to DPP or not, including reasons for that decision.

Parts 4 & 5

Clause 53 – Core participants

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.

The Commission recommends that the Committee seeks confirmation that eligible victims and family members will be notified of the need to make an application if they wish to be designated as a 'core participant' in proceedings.

Clause 69 - Duty to have regard to welfare of witnesses

Under Clause 69, there is a duty on the Director of Investigations or the 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."

The EU Victims' Directive lays down minimum standards on victims' rights and requires that victims of crime are "provided with sufficient access to justice".⁵ The EU Directive recognises the need for coordination of public services to ensure victims receive the proper degree of assistance, support and protection and requires that that general and specialised training is provided to relevant officials.⁶

The Commission recommends that the Committee seeks to satisfy itself 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.

Part 6

Clause 74: Requests by families for information

Clause 74(1) provides that where a person's death is within the remit of the Information Commission for Information Retrieval (ICIR), a

⁵ Recital 9, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

⁶ Article 25 and Recitals 61 and 62, Directive 2012/29/EU, 'Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime', 25 October 2012.

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.

Whilst the Commission 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.

The Commission recommends that the Committee consider whether the proposed timeframe allows sufficient time to ensure that all affected individuals will be able to make a formal request to the ICIR.

Part 9

Clause 93 – Definition of close family member

Under Article 2 of the Victims' Directive, the definition of 'victim' includes a family member of a person whose death was directly caused by a criminal offence and who has suffered harm as a result of that death. 'Family member' is defined more broadly in the EU Directive than under Clause 93 of the Bill and includes relatives in a direct line.

The Commission recommends that the definition of close family member be amended to include relatives in a direct line, or at least grand-parents and grand-children.