



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

## BRIEFING ON CORONERS AND JUSTICE BILL SECOND READING

### Background

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,<sup>1</sup> advising on legislative and other measures which ought to be taken to protect human rights,<sup>2</sup> advising on whether a Bill is compatible with human rights<sup>3</sup> and promoting understanding and awareness of the importance of human rights in Northern Ireland.<sup>4</sup> In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Commission's comments on the Bill are confined to the issue of "secret" inquests. This second reading brief deals only with the general principles of the Bill. The Commission intends to provide a more detailed briefing for the Committee Stage of the Bill.
3. The Coroners and Justice Bill was introduced on 14 January 2009 and contains very similar provisions for "secret" inquests to those removed in November 2008 from the

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<sup>1</sup> Northern Ireland Act 1998, s.69(1).

<sup>2</sup> *Ibid.*, s.69(3).

<sup>3</sup> *Ibid.*, s.69(4).

<sup>4</sup> *Ibid.*, s.69(6).

Counter-Terrorism Bill. There was widespread opposition to the proposals, both in terms of their content and the manner of their inclusion, without consultation, in the Counter-Terrorism Bill. The Government agreed to withdraw the provisions for further consideration in the long awaited Coroners Bill.<sup>5</sup>

4. The Commission understands that the circumstances which the Government is seeking to address in these provisions are unusual and rare. However, by definition, they are likely to apply to inquests into deaths arising in the most controversial and contested of situations. The provisions proposed could apply across the full range of deaths which come before the coroner; for example, deaths in hospital, police custody, immigration detention centre or prison, as the result of a fatal accident involving public transport as well as inquiries arising from the use of force by state agents.

### **Not just a replication but an extension of the Counter-Terrorism Bill provisions**

5. The Northern Ireland Human Rights Commission strongly advised Government not to introduce these provisions during the passage of the Counter-Terrorism Bill. The Commission is very disappointed that its advice to Government has been ignored with the reintroduction in this Bill of such similar and indeed extended provisions in relation to "secret inquests".<sup>6</sup>

### **Safeguards inadequate**

6. Despite the rigorous analysis of the similar provisions that took place in the House of Commons and the House of Lords around Part 6 of the Counter-Terrorism Bill, Government has failed, in reintroducing the measures in the Coroners and Justice Bill to adequately address the many concerns in order

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<sup>5</sup> Serious concerns were raised by the House of Commons Justice Committee, the Joint Committee on Human Rights, the House of Lords Select Committee on the Constitution and numerous other organisations during the passage of the Counter Terrorism Bill. The provisions were also subject to serious cross party opposition by a wide range of MPs and Peers during the debates on the Counter Terrorism Bill.

<sup>6</sup> Clause 11 retains two of the grounds from the Counter Terrorism Bill intact, namely: national security and the relationship between the UK and another country. It qualifies the third of the three grounds from the Counter Terrorism Bill, namely in order to prevent harm to the public interest which now reads in order to prevent "real harm" to the public interest. The current Bill also includes two further grounds not in the Counter Terrorism provisions, namely: in order to protect the interests of preventing or detecting crime and to protect the safety of a witness or other person.

to meaningfully mitigate the serious adverse human rights impact.

7. The small number of changes the Government has made to the proposals since their withdrawal from the Counter-Terrorism Bill, intended to be safeguards, are insufficient.<sup>7</sup>

## **Article 2 European Convention on Human Rights**

8. The Commission opposes the introduction of these provisions on human rights grounds for what we see as clear potential to breach Article 2 of the ECHR<sup>8</sup> and to undermine respect for the rule of law and for the legal system.
9. Clause 11 provides that on the issue of the certificate by the Secretary of State either the inquest will proceed without a jury or any existing jury will be discharged.
10. The European Court of Human Rights has made it clear that an Article 2 compliant inquest must involve the next-of-kin. Indeed, the weight placed by the Court on the role of the next-of-kin is significant and has been described thus:

*“The Court views the protection of the legitimate interests of the next of kin as a driving aspect to the workings of all accountability mechanisms.”<sup>9</sup>*

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<sup>7</sup> For example, the requirement in Clause 11(4) that the Secretary of State must as soon as possible notify interested persons of the certification and Clause 11(5) whereby certification will not have effect for 14 days or until the conclusion of any judicial review proceedings.

<sup>8</sup> The criteria for an Article 2 compliant investigation/inquest were clearly set out by the European Court of Human Rights in *Jordan v UK* ([2003] 37 EHRR 70 at paras 105-109).

They require that:

- the inquiry must be on the initiative of the state
- it must be independent
- it must be capable of leading to a determination of whether any force used was justified, and to the identification and punishment of those responsible for the death
- it must be prompt and proceed with reasonable expedition
- it must be open to public scrutiny to a degree sufficient to ensure accountability, and
- the next-of-kin of the deceased must be involved in the inquiry to the extent necessary to safeguard their legitimate interests.

<sup>9</sup> See: Ni Aolain F, ‘Truth-telling, Accountability and the Right to Life in Northern Ireland’ in *European Human Rights Law Review*, [220] 572, p 584. This refers to a series of cases from Northern Ireland which had been heard before the European Court of Human Rights.

11. The Commission considers the exclusion of the next-of-kin, while not explicit, to be a highly likely outcome of these clauses, and a potential breach of Article 2 ECHR as interpreted by the European Court of Human Rights.<sup>10</sup>
12. The explanatory notes accompanying the Bill state that:  
*"In order to ensure that the interests of the next of kin are fully protected provision will be made in rules enabling the coroner to appoint independent counsel to the inquest."*<sup>11</sup>
13. This means that not only will the family of the deceased be excluded but so too will their lawyer of choice. The explanatory notes state:

*"Although counsel to the inquest would not be independent of the inquest, the Government considers that this is not vital since the Coroner (who will be a High Court Judge) will be independent..."*

### **Northern Ireland-the legacy of the conflict**

14. There are additional grounds for the opposition of any extension of these proposals to Northern Ireland. Particular issues arise in Northern Ireland relating to the legacy of the troubles and the need to find appropriate ways to deal with our past with over 3,600 deaths in a 30-year period, many of them in contested circumstances yet to be aired in the public domain. There are many genuine private and public attempts to address those issues underway in Northern Ireland today. Any extension of these proposals to Northern Ireland would be viewed as bad faith by the British Government – one of the parties to the conflict there – and could seriously jeopardise progress on what is a very politically sensitive issue.
15. The Commission considers that these measures will merely serve to exacerbate the existing problems identified in the coronial system as regards compliance with Article 2 ECHR. Indeed, should the powers in Clause 11 of the Bill be applied to 'the legacy' of conflict related inquests, which are finally expected to be heard in the near future in Northern Ireland, the Commission is of the view that the likelihood of an Article 2 compliant inquest would decrease significantly.

### **Northern Ireland – the worst of both worlds**

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<sup>10</sup> Indeed Clause 34(4) states that: "Coroners rules may make provision requiring a person holding an inquest that has to be held without a jury because of section 11(6) to give a direction excluding persons, except those of a prescribed description, from all or part of the inquest".

<sup>11</sup> See para 804.

16. The Bill presents the worst of both worlds in respect of Northern Ireland. Clause 38 extends the “secret inquests” provisions of clause 11 without the extension of a number of the positive provisions of the Bill regarding wider coronial reform such as rights of appeal under Clause 30, and the important requirement in Clause 5(2) in relation to the scope of the inquest.<sup>12</sup>

## **Conclusion**

17. For the reasons outlined above, the Commission urges Members of Parliament to oppose the inclusion of Clause 11 in the Bill and its extension to Northern Ireland.

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<sup>12</sup> Clause s.5(2) provides that: “*Where necessary, in order to avoid a breach of any Convention rights... the purpose... is to be read as including the purpose of ascertaining in what circumstances the deceased came by his or her death*”. The Explanatory Notes accompanying the Bill state: “*The new provision makes the position expressly clear. The clauses therefore ensure that investigations into deaths under the Bill are compatible with the ECHR as determined by Middleton*”.