



# Northern Ireland Troubles (Legacy and Reconciliation) Act 2023

## 2023 CHAPTER 41

### PART 3

#### INVESTIGATIONS, LEGAL PROCEEDINGS ETC AND RELEASE OF PRISONERS

##### *Criminal investigations and proceedings*

#### **38 No criminal investigations except through ICRIR reviews**

- (1) 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.
- (2) But that does not prevent the ICRIR from carrying out any of its functions .
- (3) The Chief Constable of the PSNI and the chief officer of each police force in Great Britain must notify the Secretary of State of any criminal investigations of Troubles-related offences which, on the day before this section comes into force, their police force is carrying out.
- (4) This section has effect subject to section 42(3) (criminal investigations relating to pre-commencement prosecutions).

#### **39 Grant of immunity: prohibition of criminal enforcement action**

- (1) This section applies in relation to a serious or connected Troubles-related offence if a person (P) has been granted immunity from prosecution for the offence under section 19.
- (2) No criminal enforcement action may be taken against P in respect of the offence.

**40 No grant of immunity: restrictions on criminal enforcement action**

- (1) This section applies in relation to a serious or connected Troubles-related offence by a person (P) unless P has been granted immunity from prosecution for the offence under section 19.
- (2) Criminal enforcement action may be taken against P in respect of the offence by P if—
  - (a) the Commissioner for Investigations has referred conduct by P to a prosecutor under section 25 (the “relevant conduct”),
  - (b) the offence by P is—
    - (i) the suspected offence, or one of the suspected offences, notified to the prosecutor under section 25, or
    - (ii) another offence which the relevant conduct constitutes, and
  - (c) the criminal enforcement action is taken in connection with that referral (including any prosecution or conviction which follows from that referral).
- (3) An ICRIR officer, or another person acting in connection with the exercise of the ICRIR’s functions, may arrest or otherwise detain P in connection with the offence by P.
- (4) An ICRIR officer, or another person acting in connection with the exercise of the ICRIR’s functions, may charge P with the offence by P; and a prosecutor may conduct criminal proceedings arising from any such charge.
- (5) If subsection (2) becomes applicable to the offence by P, criminal enforcement action against P in respect of the offence may no longer be taken in accordance with subsection (3) or (4).
- (6) But that does not limit the criminal enforcement action that may be taken in accordance with subsection (2) after it becomes applicable (and, in particular, action previously taken in accordance with subsection (3) or (4) may be continued in accordance with subsection (2)).
- (7) Subsections (2), (3) and (4) only authorise a person to take criminal enforcement action by the exercise of powers which that person has otherwise than by virtue of this section.
- (8) This section has effect subject to section 42(4) (pre-commencement criminal enforcement action).

**41 Other Troubles-related offences: prohibition of criminal enforcement action**

- (1) This section applies in relation to a Troubles-related offence unless it is a serious or connected Troubles-related offence.
- (2) No criminal enforcement action may be taken against any person in respect of the offence.
- (3) This section has effect subject to section 42(4) (pre-commencement criminal enforcement action).

**42 General provision and saving for ongoing pre-commencement action**

- (1) Any legislation or other law is of no effect insofar as it authorises or requires a person to do anything that is prohibited by any of sections 38 to 41.

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- (2) For the purposes of sections 39 to 41, criminal enforcement action is taken against a person (P) in respect of an offence if—
  - (a) P is prosecuted for the offence,
  - (b) criminal proceedings relating to the offence are brought or continued against P, or
  - (c) P is arrested or otherwise detained in connection with the offence.
- (3) Section 38 does not prevent a criminal investigation of a Troubles-related offence being carried out by a person other than the ICRIR if—
  - (a) a public prosecution of a person for the offence had been begun before the day on which that section comes into force, and
  - (b) the criminal investigation is carried out for the purposes of that prosecution.
- (4) Section 40 or 41 does not prevent criminal enforcement action from being taken against a person (P) in respect of an offence if—
  - (a) a public prosecution of a person for the offence had been begun before the day on which that section comes into force (whether or not the prosecution was continuing on the day before that section comes into force), and
  - (b) the criminal enforcement action is taken against P in connection with the prosecution (including any conviction of P arising from that prosecution, whether given before or after that section comes into force).
- (5) Subsections (3) and (4) do not prevent provision being made under section 63(5) in connection with the coming into force of section 38, 40 or 41.
- (6) In this section—
  - (a) “public prosecution” means any prosecution other than a private prosecution;
  - (b) a public prosecution of P for an offence is “begun” when a prosecutor makes the decision to prosecute P for that offence.

*Civil proceedings, inquests and police complaints*

**43 Tort, delict and fatal accident actions**

- (1) 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.
- (2) A relevant Troubles-related civil action may not be brought on or after the day on which this section comes into force.
- (3) For the purposes of this section an action is a “relevant Troubles-related civil action” if conditions A, B and C are met.
- (4) *Condition A*: the action is to determine a claim arising out of conduct forming part of the Troubles.
- (5) *Condition B*: the action is founded on—
  - (a) tort or delict,
  - (b) a cause of action arising under fatal accidents legislation, or
  - (c) a cause of action arising under the law of any other jurisdiction that corresponds to—

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- (i) tort or delict, or
  - (ii) a cause of action arising under fatal accidents legislation.
- (6) *Condition C*: the time limit for bringing the action was, or would be (in the absence of this section), given in—
- (a) the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)),
  - (b) the Foreign Limitation Periods (Northern Ireland) Order 1985 (S.I. 1985/754 (N.I. 5)),
  - (c) the Limitation Act 1980,
  - (d) the Foreign Limitation Periods Act 1984,
  - (e) the Prescription and Limitation (Scotland) Act 1973, or
  - (f) section 190 of the Merchant Shipping Act 1995;
- (including where a court has permitted the action to be brought outside such a time limit).
- (7) Subsection (1) does not stop a relevant Troubles-related civil action from being continued on and after the day on which this section comes into force, if the court of first instance has given a final judgment on, or otherwise finally determined, the matter in dispute before that day (including by a default judgment or a consent order or, in Scotland, by a decree in absence, decree by default or summary decree).
- (8) Where subsection (1) or (2) stops an action from being continued, or brought, on or after the day on which this section comes into force, that subsection—
- (a) does not stop costs proceedings from being continued or begun on or after that day; but
  - (b) otherwise stops the proceedings in the action, and any other related proceedings, from being continued or begun on or after that day.
- (9) This section does not apply to a relevant Troubles-related civil action if, or to the extent that, section 47(1) applies to the action (prohibition of civil claims alleging invalidity of interim custody orders).
- (10) In this section—
- “costs proceedings”, in relation to a relevant Troubles-related civil action, means proceedings to determine or recover costs (in Northern Ireland or England and Wales) or expenses (in Scotland) of the action;
  - “fatal accidents legislation” means—
    - (a) the Fatal Accidents (Northern Ireland) Order 1977 (S.I. 1977/1251 (N.I. 18)),
    - (b) the Fatal Accidents Act 1976, or
    - (c) section 4 of the Damages (Scotland) Act 2011 (asp 7);
  - “matter in dispute”, in relation to a relevant Troubles-related civil action, means the claim (referred to in subsection (4)) which arises out of conduct forming part of the Troubles and which the action is to determine;
  - “other jurisdiction”, in relation to a relevant Troubles-related civil action, means a jurisdiction (whether within or outside the United Kingdom) other than the jurisdiction in which that action is, or would be, brought;
  - “other related proceedings”, in relation to a relevant Troubles-related civil action, means proceedings which relate to, or arise out of the action (including any enforcement action and any appeal), except for costs proceedings;

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“2008 Mediation Directive” means [Directive 2008/52/EC](#) of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

- (11) Schedule 9 makes provision for courts to determine whether the prohibitions in this section apply to a civil action.
- (12) Schedule 10 makes provision about bringing and continuing relevant Troubles-related civil actions if the 2008 Mediation Directive applies to the matter in dispute by virtue of the EU withdrawal agreement.

#### **44 Inquests, investigations and inquiries**

- (1) After section 16 of the Coroners Act (Northern Ireland) 1959 insert—

##### **“16A Death resulting directly from the Troubles: closure of existing inquest**

- (1) This section applies to an inquest into a death that resulted directly from the Troubles that was initiated before 1 May 2024 unless, on that day, the only part of the inquest that remains to be carried out is the coroner or any jury making or giving the final determination, verdict or findings, or something subsequent to that.
- (2) On and after that day, a coroner must not progress the conduct of the inquest.
- (3) As soon as practicable on or after that day, the coroner responsible for the inquest must close the inquest (including by discharging any jury that has been summoned).
- (4) The provision in section 14(1) requiring a coroner to conduct an inquest is subject to this section.

##### **16B Death resulting directly from the Troubles: prohibition of new inquest**

On and after the day on which section 44 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 comes into force—

- (a) a coroner must not decide to hold an inquest into any death that resulted directly from the Troubles, and
- (b) the Attorney General or Advocate General for Northern Ireland must not give a direction under section 14 for the conduct of an inquest into any death that resulted directly from the Troubles.

##### **16C Interpretation**

- (1) This section applies for the purposes of sections 16A and 16B and this section.
- (2) A death “resulted directly from the Troubles” if—
  - (a) the death was wholly caused by physical injuries or physical illness, or a combination of both, that resulted directly from an act of violence or force, and
  - (b) the act of violence or force was conduct forming part of the Troubles.

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- (3) “Conduct forming part of the Troubles” has the same meaning as in the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (see section 1 of that Act).
- (4) An inquest is “initiated”—
  - (a) by a coroner deciding to hold the inquest, or
  - (b) by a direction under section 14 being given for the conduct of the inquest.”
- (2) Schedule 11 makes provision about investigations and inquests in England and Wales and inquiries and investigations in Scotland.

#### **45 Police complaints**

- (1) After section 50 of the Police (Northern Ireland) Act 1998 insert—

##### **“50A Complaints relating to conduct forming part of the Troubles**

- (1) On and after the day on which section 45 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 comes into force, this Part—
  - (a) ceases to apply to a complaint (if made before that day), or
  - (b) does not apply to a complaint (if made on or after that day),
 insofar as the complaint relates to conduct forming part of the Troubles.
- (2) On and after the day on which section 45 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 comes into force, the Chief Constable, the Board, the Director or the Department of Justice is to cease to deal with any complaint referred before that day under section 52(6) insofar as the complaint relates to conduct forming part of the Troubles.
- (3) On and after the day on which section 45 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 comes into force, the Ombudsman—
  - (a) is not to begin any formal investigation of a matter, and
  - (b) is to cease any formal investigation of a matter begun before that day,
 insofar as the matter relates to conduct forming part of the Troubles.
- (4) This section does not prevent the Ombudsman from carrying out a criminal investigation of a Troubles-related offence if—
  - (a) a public prosecution of a person for the offence had been begun before the day on which section 38 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 comes into force, and
  - (b) the criminal investigation is carried out for the purposes of that prosecution.
- (5) For the purposes of subsection (4)—
  - (a) “public prosecution” means any prosecution other than a private prosecution;
  - (b) a public prosecution of a person for an offence is “begun” when a prosecutor makes the decision to prosecute that person for that offence.
- (6) In this section—

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“conduct forming part of the Troubles” has the same meaning as in the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (see section 1 of that Act);

“formal investigation” means an investigation under section 56 (whether resulting from a referral to the Ombudsman, or a decision by the Ombudsman, under section 55).”

- (2) In section 28A of the Police Reform Act 2002 (application of complaints and misconduct provisions to matters occurring before 1 April 2004), after subsection (6) insert—

“(6A) On and after the day on which section 45 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 comes into force, this section—

- (a) ceases to apply to a pre-commencement matter or a matter to which subsection (5) applies (if the direction under subsection (1) or (4) relating to the matter was given before that day), or
- (b) does not apply to a pre-commencement matter or matter to which subsection (5) applies (if the direction under subsection (1) or (4) relating to the matter is given on or after that day),

insofar as the matter relates to conduct forming part of the Troubles.

- (6B) In subsection (6A) “conduct forming part of the Troubles” has the same meaning as in the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (see section 1 of that Act).”

- (3) After section 47 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 insert—

#### **“47A Complaint or investigation relating to Northern Ireland Troubles**

- (1) On and after the day on which section 45 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 comes into force, this Part—

- (a) ceases to apply to a complaint or investigation (if the complaint was made, or investigation was begun, before that day), or
- (b) does not apply to a complaint or investigation (if the complaint is made, or investigation is to begin, on or after that day),

insofar as the complaint or investigation relates to conduct forming part of the Troubles.

- (2) In this section “conduct forming part of the Troubles” has the same meaning as in the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (see section 1 of that Act).”

#### *Interim custody orders*

### **46 Interim custody orders: validity**

- (1) This section applies in relation to the functions conferred by—

- (a) Article 4(1) of the 1972 Order, and
- (b) paragraph 11(1) of Schedule 1 to the 1973 Act,

(which enabled interim custody orders to be made, and which are referred to in this section as the “order-making functions”).



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- (2) The order-making functions are to be treated as having always been exercisable by authorised Ministers of the Crown (as well as by the Secretary of State).
- (3) An interim custody order is not to be regarded as having ever been unlawful just because an authorised Minister of the Crown exercised any of the order-making functions in relation to the order.
- (4) The detention of a person under the authority of an interim custody order is not to be regarded as having ever been unlawful just because an authorised Minister of the Crown exercised any of the order-making functions in relation to the order.
- (5) Subsections (3) and (4) do not limit the effect of subsection (2).
- (6) This section and section 47 apply only in relation to an exercise of any of the order-making functions which was conduct forming part of the Troubles (see, in particular, section 1(2)); and for this purpose any exercise of any of the order-making functions must be assumed to have been conduct forming part of the Troubles unless the contrary is shown.
- (7) In this section and section 47—
  - “1972 Order” means the Detention of Terrorists (Northern Ireland) Order 1972 (S.I. 1972/1632 (N.I. 15));
  - “1973 Act” means the Northern Ireland (Emergency Provisions) Act 1973;
  - “authorised Minister of the Crown” means a Minister of the Crown authorised to sign interim custody orders—
    - (a) by Article 4(2) of the 1972 Order (in the case of such orders under that Article), or
    - (b) by paragraph 11(2) of Schedule 1 to the 1973 Act (in the case of such orders under that paragraph);
  - “interim custody order” means an interim custody order under—
    - (a) Article 4 of the 1972 Order, or
    - (b) paragraph 11 of Schedule 1 to the 1973 Act;
  - “order-making functions” has the meaning given in subsection (1).

#### **47 Interim custody orders: prohibition of proceedings and compensation**

- (1) On or after the commencement day, a civil action may not be continued or brought if, or to the extent that, the claim that is to be determined in the action involves an allegation that—
  - (a) the person bringing the action, or another person, was detained under the authority of an interim custody order, and
  - (b) that interim custody order was unlawful because an authorised Minister of the Crown exercised any of the order-making functions in relation to the order.
- (2) On or after the commencement day, criminal proceedings relating to the quashing of a conviction may not be continued or brought if, or to the extent that, the grounds for seeking to have the conviction quashed involve an allegation that—
  - (a) the person bringing the proceedings, or another person, was detained under the authority of an interim custody order, and
  - (b) that interim custody order was unlawful because an authorised Minister of the Crown exercised any of the order-making functions in relation to the order.



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- (3) If criminal proceedings relating to the quashing of a conviction are pre-commencement proceedings—
- (a) subsection (2) does not apply to the criminal proceedings;
  - (b) section 46 does not prevent the court from quashing the conviction on the ground that an interim custody order was unlawful because an authorised Minister of the Crown exercised any of the order-making functions.
- (4) On or after the commencement day, no compensation for a miscarriage of justice is to be paid in respect of a conviction that has been reversed solely on the ground that an interim custody order was unlawful because an authorised Minister of the Crown exercised any of the order-making functions.
- (5) Regulations under section 58(2) which make provision that is consequential on section 46 or this section—
- (a) may amend this Act (including this section);
  - (b) (whether or not they make such amendments) are subject to made affirmative procedure, unless they are instead made in accordance with section 58(5) (the affirmative procedure) or 58(6) (the negative procedure).
- (6) In this section—
- “commencement day” means the day on which this section comes into force;
  - “compensation for a miscarriage of justice” means compensation under section 133 of the Criminal Justice Act 1988;
  - “pre-commencement proceedings” means proceedings—
    - (a) for which leave was given before the commencement day, or
    - (b) which follow from a referral made by the Criminal Cases Review Commission before the commencement day.

### *Release of prisoners*

## **48 Prisoner release**

Schedule 12 makes provision about prisoner release under the Northern Ireland (Sentences) Act 1998.