

SCHEDULES

SCHEDULE 5

NO IMMUNITY IN CERTAIN CIRCUMSTANCES

PART 1

SEXUAL OFFENCE, EXISTING CONVICTION OR ONGOING PROSECUTION

Application of this Part

- 1 This Part of this Schedule applies if—
- (a) a person (P) has requested the ICIR to grant P immunity from prosecution (the “current request”) under section 19 and conditions A to C are met, but
 - (b) this Schedule prohibits a grant of immunity for an identified possible offence (see paragraphs 2 and 3).

Prohibition of grant of immunity: sexual offences

- 2 (1) A grant of immunity for an identified possible offence is prohibited if it is—
- (a) a sexual offence, or
 - (b) an inchoate offence relating to a sexual offence.
- (2) For the purposes of this paragraph “sexual offence” includes—
- (a) rape;
 - (b) any offence committed by—
 - (i) sexual assault,
 - (ii) sexual activity, or
 - (iii) causing or inciting another person to engage in sexual activity;
 - (c) any offence relating to indecent images of children.
- (3) For the purposes of this paragraph “inchoate offence relating to a sexual offence” includes an offence of—
- (a) attempting to commit a sexual offence;
 - (b) conspiracy to commit a sexual offence;
 - (c) incitement to commit a sexual offence;
 - (d) aiding, abetting, counselling or procuring the commission of a sexual offence.
- (4) The Secretary of State may, by regulations, make provision about the meaning of—
- (a) “sexual offence”, or
 - (b) “inchoate offence relating to a sexual offence”;
- for the purposes of this Part of this Schedule (including provision specifying offences which are to comprise, or to be included in, that definition).

(5) Regulations under this paragraph are subject to negative procedure.

Prohibition of grant of immunity: conviction or ongoing prosecution

- 3 (1) A grant of immunity for an identified possible offence is prohibited if—
- (a) P has a conviction for the identified possible offence,
 - (b) P is being prosecuted for the identified possible offence, or
 - (c) P is being prosecuted for any other offence (whether or not a Troubles-related offence), and the immunity requests panel is satisfied that granting P immunity from prosecution for the identified possible offence would risk having, or would have, a prejudicial effect on that prosecution.
- (2) For the purposes of this paragraph—
- (a) P is “being prosecuted for” an offence if a public prosecution of P for the offence has begun and is continuing;
 - (b) a “public prosecution” means any prosecution other than a private prosecution;
 - (c) a public prosecution of P for an offence “has begun” if a prosecutor has made the decision to prosecute P for that offence;
 - (d) the circumstances in which a public prosecution of P is to be regarded as continuing include circumstances where the trial which forms part of the prosecution ends without P being convicted or acquitted or any other verdict being given and either—
 - (i) the period for the prosecution to seek a retrial is continuing (without a retrial having been sought), or
 - (ii) the prosecution have sought a retrial;
 - (e) the circumstances in which a public prosecution of P is to be regarded as not continuing include—
 - (i) circumstances where the trial which forms part of the prosecution ends with P being convicted or acquitted or with another verdict being given, and
 - (ii) circumstances where the trial ends without P being convicted or acquitted or any other verdict being given and the period for the prosecution to seek a retrial ends without a retrial having been sought.

Grant of immunity prohibited for all identified possible offences

- 4 (1) If this Schedule prohibits a grant of immunity for all of the identified possible offences, the ICRR must not grant P immunity from prosecution in relation to the current request.
- (2) Accordingly, section 19(1) and (7) to (16) do not apply in relation to the current request.

Grant of immunity prohibited for some identified possible offences

- 5 (1) This paragraph applies if this Schedule prohibits a grant of immunity for some (but not all) of the identified possible offences.

- (2) The immunity requests panel must not decide under section 19(7) that P should be granted immunity from prosecution for—
 - (a) any identified possible offence for which this Schedule prohibits a grant of immunity, or
 - (b) a description of offences that includes any identified possible offence for which this Schedule prohibits a grant of immunity.
- (3) The ICRIR must not grant P immunity from prosecution for any identified possible offence for which this Schedule prohibits a grant of immunity.
- (4) Section 19(7) to (13) have effect subject to this paragraph.