

Status: Point in time view as at 01/12/2023. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, PART 2. (See end of Document for details)

SCHEDULES

VALID FROM 01/05/2024

SCHEDULE 6

PERMITTED DISCLOSURES OF INFORMATION

PART 2

DECISIONS TO PROHIBIT DISCLOSURES OF SENSITIVE INFORMATION IN FINAL REPORTS

Application of this Part

- 7 This Part of this Schedule applies if—
- (a) it was proposed to disclose sensitive information in a final report (the “proposed disclosure”),
 - (b) the Commissioner for Investigations notified the Secretary of State of the proposed disclosure in accordance with paragraph 4(1)(a), and
 - (c) the Secretary of State decided to prohibit the proposed disclosure in the final report (the “affected report”).

Commencement Information

- II** Sch. 6 para. 7 not in force at Royal Assent, see [s. 63\(4\)](#)

Affected report to include statement of Secretary of State’s decision

- 8 (1) The affected report must include a statement that the Secretary of State decided to prohibit the proposed disclosure.
- (2) The statement must also set out any reasons for prohibiting the disclosure which the Secretary of State gives in accordance with paragraph 4(4).
- (3) In a case where—
- (a) the affected report includes a statement relating to the proposed disclosure in accordance with this paragraph,
 - (b) an initial appeal is brought against the Secretary of State’s decision not to permit the proposed disclosure, and
 - (c) the Secretary of State remakes the decision in accordance with a direction given by the court,
- a new final report relating to the death or other Troubles-related circumstances must be produced in accordance with section 15.

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Commencement Information

I2 Sch. 6 para. 8 not in force at Royal Assent, see [s. 63\(4\)](#)

Initial appeals

- 9 (1) In this Part of this Schedule “initial appeal” means an appeal to the relevant court against the Secretary of State’s decision not to permit the proposed disclosure in the affected report.
- (2) The function of the relevant court on an initial appeal is to review the Secretary of State’s decision not to permit the proposed disclosure.
- (3) In determining an initial appeal, the relevant court must apply the principles applicable on an application for judicial review or, in Scotland, an application to the supervisory jurisdiction of the Court of Session.
- (4) On an initial appeal—
- (a) the court has the power to quash the Secretary of State’s decision;
 - (b) if the court quashes the decision, it must direct the Secretary of State to remake the decision within—
 - (i) the period of 60 days beginning with the day on which the court gives the direction, or
 - (ii) any reasonable longer period which the court specifies (after considering any representations made by a party to the proceedings).
- (5) If the court does not exercise that power to quash the decision, it must dismiss the appeal.

Commencement Information

I3 Sch. 6 para. 9 not in force at Royal Assent, see [s. 63\(4\)](#)

Bringing an initial appeal

- 10 (1) An initial appeal may be brought by—
- (a) the person who requested the review to which the affected report relates, or
 - (b) a person who would be eligible to request a review (see paragraph 13(3)).
- (2) An initial appeal must be brought within the period of 28 days beginning with the day on which the affected report is published under section 17.

Commencement Information

I4 Sch. 6 para. 10 not in force at Royal Assent, see [s. 63\(4\)](#)

Further appeal against an initial appeal

- 11 (1) This paragraph applies if the relevant court has determined an initial appeal.

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- (2) The person who brought the initial appeal may bring an appeal in the appeal court against the determination of the initial appeal (a “further appeal”).
- (3) But that person may bring the further appeal only with the leave of—
 - (a) the relevant court which determined the initial appeal, or
 - (b) the appeal court.
- (4) The court may not give such leave unless satisfied that—
 - (a) the further appeal would raise some important point of principle or practice, or
 - (b) there is some other compelling reason for the further appeal to be heard.

Commencement Information

I5 Sch. 6 para. 11 not in force at Royal Assent, see [s. 63\(4\)](#)

Application of the Justice and Security Act 2013

- 12
- (1) Any proceedings on an initial appeal or a further appeal (including any proceedings before the Supreme Court) are to be treated as section 6 proceedings (within the meaning of the JSA 2013) for the purposes of sections 8 to 14 of the JSA 2013.
 - (2) Sections 8 to 14 of the JSA 2013 apply in relation to proceedings treated as section 6 proceedings by sub-paragraph (1) as if—
 - (a) the Secretary of State were the relevant person, and
 - (b) the references to the interests of national security in sections 8, 11 and 13 of the JSA 2013 were references to the interests of national security or the interests of the international relations of the United Kingdom.
 - (3) But sections 8 to 14 of the JSA 2013, and rules of court relating to section 6 proceedings, do not prevent an appeal under this paragraph from being considered in the presence of—
 - (a) the Commissioner for Investigations,
 - (b) another ICRIR officer nominated by the Commissioner for Investigations, or
 - (c) a legal representative of the ICRIR.

Commencement Information

I6 Sch. 6 para. 12 not in force at Royal Assent, see [s. 63\(4\)](#)

Interpretation

- 13
- (1) In this Part of this Schedule—
 - “affected report” has the meaning given in paragraph [7\(c\)](#);
 - “appeal court” means—
 - (a) the Court of Appeal in Northern Ireland,
 - (b) the Court of Appeal in England and Wales, or
 - (c) the Inner House of the Court of Session;

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“further appeal” has the meaning given in paragraph 11;
 “initial appeal” has the meaning given in paragraph 9;
 “JSA 2013” means the Justice and Security Act 2013;
 “proposed disclosure” has the meaning given in paragraph 7(a);
 “relevant court” means—
 (a) the High Court in Northern Ireland,
 (b) the High Court in England and Wales, or
 (c) the Outer House of the Court of Session.

- (2) Expressions used in this Part of this Schedule and in sections 9 to 15 have the same meanings in this Part as in those sections.
- (3) For the purposes of bringing an initial appeal a person “would be eligible to request a review” if, at the time of bringing the initial appeal, the person would be entitled to make a request under—
 (a) section 9 for a review of the death to which the affected report relates, or
 (b) section 10 for a review of the other Troubles-related circumstances to which the affected report relates;
 and, in determining whether the person would be entitled to make the request, the fact that a review has already been requested must be ignored.
- (4) The following provisions apply to a determination (for the purposes of subparagraph (3)) of whether a person would be entitled to make a request under section 9.
- (5) In the case of a request under section 9(2), it is for the relevant court (rather than the Commissioner for Investigations) to decide the person’s entitlement to make the request (and accordingly section 9(7) does not apply).
- (6) In determining for the purposes of this Schedule whether a person is, under Schedule 3, a close family member of D, paragraph 1(2) of Schedule 3 has effect as if the following provision were substituted for paragraph (f)—
 “(f) was a step-parent of D on the day of D’s death or is a step-parent of D on—
 (i) the day on which the request for the review is made, or
 (ii) the day when the initial appeal is brought;”.

Commencement Information

I7 Sch. 6 para. 13 not in force at Royal Assent, see **s. 63(4)**

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