

# Draft Northern Ireland (Stormont House Agreement) Bill

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TO

Establish the Historical Investigations Unit, to make provision about the Independent Commission on Information Retrieval, to provide for the Public Records Office of Northern Ireland to organise an oral history archive, and to establish the Implementation and Reconciliation Group, in pursuance of the Stormont House Agreement; and to make provision about release on licence of certain prisoners serving sentences of imprisonment in Northern Ireland.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

INTRODUCTORY PROVISIONS

**1 The “general principles”**

In this Act the “general principles” means—

- (a) the principle that reconciliation should be promoted;
- (b) the principle that the rule of law should be upheld;
- (c) the principle that the suffering of victims and survivors should be acknowledged;
- (d) the principle that the pursuit of justice and the recovery of information should be facilitated;
- (e) the principle that human rights obligations should be complied with; and
- (f) the principle that the approach to dealing with Northern Ireland’s past should be balanced, proportionate, transparent, fair and equitable.

**PART 2**

## THE HISTORICAL INVESTIGATIONS UNIT

*Establishment of the HIU***2 Establishment of the Historical Investigations Unit**

- (1) The Historical Investigations Unit is established.
- (2) In this Act, the Historical Investigations Unit is referred to as the “HIU”.
- (3) The HIU is a body corporate.
- (4) The HIU is not a servant or agent of the Crown.
- (5) The HIU does not enjoy any status, privilege or immunity of the Crown.
- (6) The property of the HIU is not property of, or property held on behalf of, the Crown.
- (7) Schedule 1 (powers and proceedings of the HIU) has effect.

**3 HIU members and officers**

- (1) The HIU is to consist of the following members –
  - (a) the Director of the Historical Investigations Unit, and
  - (b) four other members.
- (2) The Director is an Historical Investigations Unit officer.
- (3) The HIU may employ persons as Historical Investigations Unit officers.
- (4) The HIU may make arrangements for persons to be seconded to the HIU to serve as Historical Investigations Unit officers.
- (5) In employing and seconding persons to be HIU officers, the HIU must ensure that (as far as it is practicable) the HIU officers include –
  - (a) persons who have experience of conducting criminal investigations in Northern Ireland, and
  - (b) persons who do not have that experience but have experience of conducting criminal investigations outside Northern Ireland.
- (6) In complying with that duty, the HIU must have particular regard to the principle in section 1(f) that the approach to dealing with Northern Ireland’s past should be balanced, proportionate, transparent, fair and equitable.
- (7) Schedule 2 (HIU members and officers) has effect.

**4 Funding**

- (1) For each financial year of the HIU –
  - (a) the Department of Justice must pay the Policing Board the amount which appears to the Department to be appropriate to meet the expenses of the HIU for that financial year; and
  - (b) the Policing Board must put the HIU’s funding at the disposal of the HIU.

- (2) The Department of Justice may pay the HIU’s funding to the Policing Board –
  - (a) in a single amount, or
  - (b) in instalments determined by the Department.
- (3) The Department of Justice is to decide the time when it is to pay the HIU’s funding, or any instalment of the HIU’s funding, to the Policing Board.
- (4) The time of such a payment may fall –
  - (a) during the financial year concerned, or
  - (b) after that year has ended.
- (5) The first financial year of the HIU is the period that –
  - (a) begins with the specified day, and
  - (b) ends with the following 31 March.
- (6) After that, the financial year of the HIU is each period of 12 months ending with 31 March.
- (7) In this section “HIU’s funding” means the amount payable by the Department of Justice to the Policing Board for a financial year in accordance with subsection (1)(a).

#### *Functions of the HIU*

### **5 Deaths within the HIU’s remit**

- (1) A death is within the HIU’s remit if –
  - (a) the death is part of the caseload of the Police Service Historical Enquiries Team and requires further investigation by the HIU;
  - (b) the death is part of the caseload of the Ombudsman’s Historical Investigations Directorate and requires further investigation by the HIU; or
  - (c) the death was wholly caused by physical injuries or physical illness that were or was the direct result of an act of violence or force that –
    - (i) has the required connection with Northern Ireland, and
    - (ii) was carried out in Northern Ireland during the period beginning with 11 April 1998 and ending with 31 March 2004.
- (2) The HIU must, within the period of 90 days beginning with the specified day, and from time to time afterwards, produce and publish a document which states the names of the persons whose deaths are within its remit.
- (3) For each death that is listed, the document must also –
  - (a) state the date, or presumed date, of the death; and
  - (b) include whichever of the following statements is applicable to the death –
    - (i) the death is part of the caseload of the Police Service Historical Enquiries Team;
    - (ii) the death is part of the caseload of the Ombudsman’s Historical Investigations Directorate;
    - (iii) the death was wholly caused by physical injuries or physical illness of the kind described in subsection (1)(c);
    - (iv) Schedule 5 applies to the death.

- (4) Schedule 3 (deaths within the HIU's remit) has effect.
- (5) The HIU must, within the period of 90 days beginning with the specified day, and from time to time afterwards –
  - (a) establish which deaths are within its remit because of paragraphs 3(4) and 6 or 7 of Schedule 3;
  - (b) establish which deaths are within its remit by virtue of subsection (1)(c).
- (6) For the purposes of subsection (1)(c) an act of violence or force has “the required connection with” Northern Ireland if the act was carried out –
  - (a) for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between persons there, or
  - (b) in connection with preventing, investigating, or otherwise dealing with the consequences of, an act intended to be done, or done, for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between persons there.

## **6 Functions of the HIU**

- (1) The HIU must investigate deaths that are within the HIU's remit.
- (2) But that duty, and the other duties imposed by this section, are subject to the other provisions of this Part (in particular section 9).
- (3) The Director must issue a statement which sets out the manner in which the HIU is to exercise its investigatory function.
- (4) The statement must include statements of the manner in which the HIU is to exercise its investigatory function so as to secure –
  - (a) that its Article 2 obligations are complied with;
  - (b) that its other human rights obligations are complied with;
  - (c) that the order in which deaths are investigated is in accordance with section 8.
- (5) The statements required by subsection (4) must (in particular) deal with compliance with the HIU's Article 2 obligations, and other human rights obligations, in connection with the investigation of deaths in accordance with the conflict of interest protections.
- (6) Section 11 makes further provision about the statement.
- (7) For each person's death which the HIU investigates, the HIU must produce a report on the death of that person which is suitable for provision to members of the family of a deceased person (a “family report”, about which sections 17 to 21 make further provision).
- (8) The HIU must give support and other assistance to the members of the families of persons whose deaths are within the HIU's remit (about which section 22 makes further provision).
- (9) The HIU has the other functions conferred by the other provisions of this Act and by other enactments.
- (10) Schedule 4 (continuing Police Service or Ombudsman investigation: transitional provision) has effect.
- (11) In this section –



“Article 2 obligations” means the human rights obligations so far as they relate to the Convention rights set out in Article 2 of the Convention (and here “Convention rights” and “Convention” have the same meanings as in the Human Rights Act 1998);

“conflict of interest protections” means section 10(3) and (4).

## **7 Exercise of functions by the HIU**

- (1) The HIU must exercise its functions in a manner that is –
  - (a) consistent with the general principles;
  - (b) fair and impartial;
  - (c) proportionate;
  - (d) effective and efficient; and
  - (e) calculated to secure –
    - (i) the independence of the HIU, and
    - (ii) the confidence of the public in the HIU.
- (2) The HIU must not do anything in carrying out its functions which might –
  - (a) prejudice the national security interests of the United Kingdom,
  - (b) put at risk the life or safety of any person, or
  - (c) have a prejudicial effect on any actual or prospective –
    - (i) criminal proceedings in the United Kingdom or Ireland, or
    - (ii) police disciplinary proceedings in respect of a member of the Police Service or the Reserve.
- (3) In relation to any exercise of functions by the HIU, criminal proceedings or police disciplinary proceedings are “prospective” if, in the view of the HIU, the proceedings are likely to be brought within a reasonable period after that exercise of functions.
- (4) For provision about the way in which subsection (2) operates in relation to disclosures of information by the HIU, see section 27(2) to (4).

### *Exercise of the investigatory function*

## **8 Exercise of the investigatory function**

- (1) Subject to the other provisions of this Part (in particular section 9), the investigation of a death that is within the HIU’s remit must include –
  - (a) the investigation of any criminal offences relating to the death, and
  - (b) the investigation of any non-criminal police misconduct relating to the death which the HIU considers it appropriate to investigate because of –
    - (i) the gravity of the misconduct, or
    - (ii) exceptional circumstances.
- (2) The deaths that are within the HIU’s remit must be investigated by the HIU in the order in which they occurred or are presumed to have occurred.
- (3) The Director may arrange for one or more deaths to be investigated in a different order, but only if the Director is satisfied that –
  - (a) there are exceptional circumstances, and

- (b) the HIU would perform its functions more effectively by investigating deaths in the different order.
- (4) Schedule 5 (substantially complete investigations: HIU functions modified) has effect.
- (5) Schedule 6 (new evidence relating to a death) has effect.

## 9 Operational control by Director

- (1) The Director has operational control over the exercise of the HIU's investigatory function (subject to the provisions of section 8(2) and (3) relating to the order in which deaths are to be investigated).
- (2) The aims to which the Director has regard in exercising operational control must include the aim of completing the exercise of the investigatory function within the period of 5 years beginning with the specified day.
- (3) The Director's operational control includes the powers to decide –
  - (a) the extent to which it is necessary for the investigatory function to be exercised in relation to a particular death, and
  - (b) the manner in which the investigatory function is to be exercised in relation to a particular death.
- (4) But the investigatory function is not to be exercised in relation to a death unless –
  - (a) condition A, B or C is met, or
  - (b) the Director considers that the information which the HIU has is not sufficient to enable a view to be formed –
    - (i) on whether condition B is met, or
    - (ii) on whether condition C is met.
- (5) Where the investigatory function is exercisable in accordance with subsection (4)(b), the function is to be exercised only for the purposes of seeking information that would enable a view to be formed –
  - (a) on whether condition B is met, or
  - (b) on whether condition C is met.
- (6) *Condition A*: there is new evidence relating to the death and the Director has reasonable grounds for believing that the new evidence is capable of leading to –
  - (a) the identification of a person involved in the death,
  - (b) the prosecution of a person for a criminal offence relating to the death, or
  - (c) the initiation of disciplinary proceedings against a person for non-criminal police misconduct relating to the death.
- (7) *Condition B*: the Director has reasonable grounds for believing that a criminal offence relating to the death has been committed and that there are reasonable investigative steps that the HIU could take which are capable of leading to –
  - (a) the identification of a person who committed that criminal offence, or
  - (b) the prosecution of a person for that criminal offence.
- (8) *Condition C*: the Director –
  - (a) decides that there are reasonable investigative steps that the HIU could take which are capable of leading to –

- (i) the identification of a person whose conduct constitutes non-criminal police misconduct relating to the death, or
    - (ii) the initiation of disciplinary proceedings against a person for non-criminal police misconduct relating to the death, and
  - (b) considers that it is appropriate to investigate the misconduct because of—
    - (i) the gravity of the misconduct, or
    - (ii) exceptional circumstances.
- (9) The Director must comply with the following duties when exercising (in accordance with subsections (4) to (8)) the powers of operational control mentioned in subsection (3) in relation to a death—
  - (a) the Director must take into account any investigation into the death that has previously been carried out by any other person; and
  - (b) in particular, the Director must ensure that the HIU does not do anything which duplicates any aspect of the previous investigation unless, in the Director’s view, the duplication is necessary.
- (10) A person is “involved in” a death if—
  - (a) the person committed a criminal offence relating to the death, or
  - (b) the person’s conduct constitutes non-criminal police misconduct relating to the death.
- (11) Evidence relating to a death is “new evidence” if—
  - (a) the individuals carrying out the Police Service investigatory process or the HID investigation relating to the death—
    - (i) did not know of the evidence, or
    - (ii) did not know of the relationship between the evidence and the death; or
  - (b) the HIU—
    - (i) did not previously know of the evidence, or
    - (ii) did not previously know of the relationship between the evidence and the death.
- (12) When the Director is forming the belief about whether new evidence is capable of leading to the identification of a person, the prosecution of a person or the initiation of disciplinary proceedings against a person, the Director must—
  - (a) take account of the credibility of the new evidence, and
  - (b) take the new evidence into account with all other relevant matters.
- (13) The following matters (in particular) do not prevent the Director from forming a belief that new evidence is, or reasonable investigative steps are, capable of leading to the identification of a person, the prosecution of a person or the initiation of disciplinary proceedings against a person—
  - (a) that person’s physical or mental health at any time;
  - (b) that person’s absence from the jurisdiction at any time;
  - (c) the death of that person since the time when the criminal offence or non-criminal police misconduct occurred;
  - (d) the death of any other person since that time;
  - (e) the period that has elapsed since that time.
- (14) If the investigatory function is not exercised in relation to a death by virtue of subsection (4), the HIU must—

- (a) determine whether there is any additional information relating to the death;
  - (b) use any existing information, documents or other material relating to the death, and any additional relevant information relating to the death, to produce a report on the death for the members of the family of the deceased (the “family report”).
- (15) Sections 17 to 19 apply to a family report produced under subsection (14) as they apply to a family report produced after an investigation by the HIU.

## 10 Avoiding conflicts of interest

- (1) The Director may require an HIU officer, or a person who is being considered for appointment as an HIU officer, to provide the HIU with information about any matter which might reasonably be expected to –
  - (a) give rise to a conflict of interest, or
  - (b) otherwise affect the person’s ability to carry out his or her duties fairly and impartially.
- (2) The Director must make arrangements to secure that each of the HIU officers involved in the investigation of a particular death that is within the HIU’s remit does not have, and could not reasonably be perceived as having, a conflict of interest in relation to that investigation.
- (3) The Director must make arrangements to secure that –
  - (a) the HIU officers with responsibility for investigating deaths within the HIU’s remit are organised in a number of separate units; and
  - (b) at least one investigation unit does not include any HIU officer who has, or could be perceived as having, a work-related conflict of interest in respect of the investigation of any of the deaths within the HIU’s remit.
- (4) In allocating the investigation of a death to a particular investigation unit, the Director must –
  - (a) consult the following persons about whether the investigation should be allocated to an investigation unit of the kind mentioned in subsection (3)(b) –
    - (i) close family members of the deceased who have had contact with an HIU officer in accordance with section 22(2) or have sought or received other support or assistance in accordance with section 22(1)(b), and
    - (ii) such other members of the family of the deceased (including other close family members) as the Director considers appropriate; and
  - (b) have regard to their views in allocating the investigation.
- (5) In this section –
  - “investigation unit” means a unit set up in accordance with subsection (3)(a);
  - “work-related conflict of interest” means a conflict of interest in respect of the HIU’s investigatory function that arises from an HIU officer’s activities in any previous employment or office.

## **11 Statement about the exercise of the investigatory function**

- (1) The HIU must have regard to the statement issued under section 6(3) when exercising its investigatory function.
- (2) The Director must—
  - (a) keep the statement under review, and
  - (b) if the Director considers it appropriate, issue a new statement (which may be wholly or partly different from the existing statement).
- (3) The Director must consult the Policing Board before issuing—
  - (a) the first statement, or
  - (b) any other statement which is, in the Director’s view, significantly different from the statement it replaces.
- (4) On each occasion when the Director issues a statement, the HIU must arrange for the statement to be published in the manner which the Director considers appropriate.

## **12 Separate conduct of criminal and police misconduct investigations**

- (1) The Director must form a view on the questions set out in subsection (2)—
  - (a) before the HIU starts to investigate a death that is within its remit; and
  - (b) from time to time during the HIU’s investigation of a death that is within its remit.
- (2) Those questions are—
  - (a) whether there are any criminal offences relating to the death which the HIU will be, or is, required by section 8(1) to investigate as part of its investigation of the death (the “criminal investigation”);
  - (b) whether there is any non-criminal police misconduct relating to the death which the HIU will be, or is, required by section 8(2) to investigate as part of its investigation of the death (the “police misconduct investigation”).
- (3) The Director must comply with the following provisions of this section if (at any time) the Director forms the view that, as part of its investigation of the death, it is required to conduct both—
  - (a) the criminal investigation, and
  - (b) the police misconduct investigation.
- (4) The Director must make arrangements to secure that the criminal investigation—
  - (a) is conducted before the police misconduct investigation, and
  - (b) is conducted separately from the police misconduct investigation.
- (5) Subsection (4) does not prevent information obtained in the criminal investigation from being used in the police misconduct investigation (so far as this is consistent with other legislation, in particular the Crime (International Co-operation) Act 2003).
- (6) If the HIU has already started to conduct (but has not concluded) the police misconduct investigation when the Director forms the view mentioned in subsection (3), the HIU must suspend the conduct of that investigation until it has conducted the criminal investigation.

**13 Criminal investigation reports**

- (1) The Director must make arrangements to secure that, when the HIU finishes a criminal investigation in relation to a death, the HIU officer responsible for the investigation produces a report on the investigation for the Director (the “criminal investigation report”).
- (2) The Director must give a copy of the criminal investigation report to the Director of Public Prosecutions for Northern Ireland (the “DPP”).
- (3) That duty to give the DPP a copy of the criminal investigation report applies whether or not the investigation concludes that any criminal offences were committed; but if it concludes that any criminal offences were committed, the Director must give the DPP (with the copy of the report) a statement of those offences.
- (4) Subsections (1) to (3) do not prevent the HIU from giving the DPP a report on a criminal investigation, or any other information relating to a criminal investigation, at any time before the criminal investigation is finished.
- (5) Where the Director gives the DPP –
  - (a) a copy of the criminal investigation report, or
  - (b) any report or other information before the investigation is finished,the DPP may require the HIU to ascertain, and supply to the DPP, all further information relating to the death which appears to the DPP to be necessary for the discharge of the DPP’s functions.
- (6) A single report may combine the criminal investigation reports relating to different deaths; and in this section a reference to a criminal investigation report also applies to a single report which combines different criminal investigation reports.
- (7) In this section “criminal investigation” has the same meaning as in section 12.

**14 Police misconduct investigations: procedure and report**

- (1) The HIU must –
  - (a) establish procedures to be followed in police misconduct investigations, and
  - (b) issue a statement of those procedures.
- (2) The procedures must be consistent with the procedures followed in the investigation of the conduct of members of the Police Service by the Police Service or the Ombudsman.
- (3) In establishing those procedures, the HIU must consult –
  - (a) the Chief Constable, and
  - (b) the Ombudsman.
- (4) The HIU must give a copy of the statement of those procedures to a person who –
  - (a) is or was a member of the Police Service or the Reserve, or
  - (b) was a member of the Royal Ulster Constabulary or the Royal Ulster Constabulary Reserve,if a police misconduct investigation relates to that person’s conduct and the person requests a copy of the statement.

- (5) The Director must make arrangements to secure that, when the HIU finishes a police misconduct investigation in relation to a death, the HIU officer responsible for the investigation produces a report on the investigation for the Director (the “misconduct investigation report”).
- (6) A single report may combine the misconduct investigation reports relating to different deaths.
- (7) In this section “police misconduct investigation” has the same meaning as in section 12.

## 15 Recommendations regarding police discipline

- (1) If an investigation includes an investigation of the conduct of a person who is a member of the Police Service or the Reserve, the HIU may notify the disciplinary authority that the HIU is investigating that conduct.
- (2) If the disciplinary authority is given such a notification, the disciplinary authority must not bring disciplinary proceedings against the person in respect of conduct being investigated by the HIU unless the HIU –
  - (a) gives the disciplinary authority a memorandum under subsection (3) in relation to that conduct, or
  - (b) notifies the disciplinary authority that the HIU will not be giving such a memorandum.
- (3) The HIU must give the disciplinary authority a memorandum if –
  - (a) an investigation included investigation of the conduct of a person who is a member of the Police Service or the Reserve,
  - (b) the Director believes that police disciplinary proceedings should be brought against the person in respect of the conduct, and
  - (c) the Director is satisfied –
    - (i) that there are no actual or prospective criminal proceedings in the United Kingdom or Ireland relating to the death investigated by the HIU, or
    - (ii) that any such proceedings would not be prejudiced by police disciplinary proceedings against the person in respect of the conduct.
- (4) The memorandum must contain –
  - (a) a statement of the Director’s belief that police disciplinary proceedings should be brought against the person in respect of the conduct;
  - (b) the Director’s reasons for that belief;
  - (c) such particulars relating to the recommended proceedings as the Director considers appropriate to give to the disciplinary authority.
- (5) The disciplinary authority must notify the HIU of the action which it has taken in response to a recommendation that police disciplinary proceedings should be brought.
- (6) In a case where –
  - (a) the HIU gives the Chief Constable (as disciplinary authority) a memorandum under subsection (3), and
  - (b) the Chief Constable does not bring any police disciplinary proceedings, the Director may direct the Chief Constable to bring such proceedings.

- (7) The Director must consult the Chief Constable before giving such a direction.
- (8) If such a direction is given –
  - (a) the Chief Constable must comply with the direction, unless the Director waives this requirement; and
  - (b) the Chief Constable must not discontinue the police disciplinary proceedings that are brought, unless the Director gives leave to do so.
- (9) The Chief Constable must notify the HIU of the action taken in response to a direction under this section.
- (10) In this section –
  - “disciplinary authority” means the person or body responsible for bringing police disciplinary proceedings against a member of the Police Service or the Reserve;
  - “investigation” means an investigation by the HIU of a death within the HIU’s remit;
  - “prospective criminal proceedings”, in relation to a memorandum under this section, means criminal proceedings which, in the view of the HIU, are likely to be brought within a reasonable period after the memorandum is given.

## 16 Investigation reports

- (1) The Director must make arrangements to secure that, when the HIU finishes the investigation of a death, the HIU officer responsible for the investigation produces a report on the investigation for the Director (the “investigation report”).
- (2) The investigation report must include –
  - (a) any criminal investigation report under section 13, and
  - (b) any misconduct investigation report under section 14.
- (3) A single report may combine the investigation reports relating to different deaths; and in this section a reference to an investigation report also applies to a single report which combines different investigation reports.

## 17 Comprehensive family reports

- (1) Each family report produced in accordance with section 6(7) must be as comprehensive as possible, having regard to the need for the report to be accessible to members of the family of the deceased person.
- (2) In producing the family report, the HIU must take into account the context in which the following took place –
  - (a) the Police Service investigatory process relating to the death (where it is part of the HIU’s remit by virtue of section 5(1)(a));
  - (b) the HID investigation relating to the death (where it is part of the HIU’s remit by virtue of section 5(1)(b));
  - (c) any criminal investigation carried out by the Police Service in relation to the death (where it is part of the HIU’s remit by virtue of section 5(1)(c));

and the context in which the criminal investigation of the death took place includes procedures followed in police investigations at the time of the investigation.



- (3) Before the HIU produces a family report in relation to a death, it must confirm whether the investigatory function was exercised in relation to the death –
  - (a) in compliance with the HIU’s Article 2 obligations (within the meaning of section 6), and
  - (b) in compliance with the HIU’s other human rights obligations;and the family report must then include a statement of what has been confirmed.
- (4) Any member of the family of a deceased person may request the HIU to provide him or her with a copy of the family report relating to the person’s death.
- (5) The HIU –
  - (a) must provide a copy of the family report to any close family member of the deceased who requests it, and
  - (b) may provide a copy of the family report to any other member of the family of the deceased who requests it, if the HIU considers it appropriate to do so.
- (6) Subsection (5) does not require or authorise the HIU to provide a copy of a family report unless (and until) the HIU can provide it in accordance with sections 7(2) and 27(2).
- (7) The HIU may produce an interim report on the person’s death if, because of subsection (6), the HIU cannot provide a copy of the family report.
- (8) Any member of the family of a deceased person may request the HIU to provide him or her with a copy of any interim report relating to the person’s death.
- (9) The HIU –
  - (a) must provide a copy of the interim report to any close family member of the deceased who requests it, and
  - (b) may provide a copy of the interim report to any other member of the family of the deceased who requests it, if the HIU considers it appropriate to do so.
- (10) If the HIU decides to provide a copy of a family report or interim report to a person who is member of the family of the deceased (other than a close family member), the HIU may remove from the copy that is provided any information which would (if not removed) cause distress to close family members of the deceased.
- (11) The HIU may –
  - (a) comply with the duty under section 6(7) by producing a single family report which relates to different deaths; or
  - (b) exercise the power conferred by subsection (7) of this section by producing a single interim report which relates to different deaths.
- (12) In relation to the production of a single family report or single interim report under subsection (11), references in this section and sections 18 to 19 to the person to whose death a report relates, to a member of that person’s family, and to the event of which a death forms part, are to be read accordingly.

**18 Particular material in family or interim reports**

- (1) A family report or interim report must include a statement of any disclosure that it was proposed to include in the report –
  - (a) which was notified to the Secretary of State for the purposes of paragraph 4(1)(a) of Schedule 10, and
  - (b) which the Secretary of State decided not to permit.
- (2) If both a family report and an interim report are produced in relation to a particular death, the family report must also include a statement of any disclosures that it was proposed to include in both reports –
  - (a) which were notified to the Secretary of State for the purposes of paragraph 4(1)(a) of Schedule 10, and
  - (b) which the Secretary of State decided not permit in either report.
- (3) A statement relating to a disclosure that is included in a family report or interim report in accordance with subsection (1) or (2) must also set out any reasons for not permitting the disclosure which the Secretary of State gives in accordance with paragraph 4(3) of Schedule 10.
- (4) In a case where –
  - (a) a family report or interim report includes a statement relating to a disclosure in accordance with subsection (1) or (2),
  - (b) an appeal under section 21 is brought against the Secretary of State’s decision not to permit the disclosure, and
  - (c) the Secretary of State remakes the decision in accordance with a direction given by the court on the appeal,the HIU must produce a new family report or interim report.
- (5) If any information relating to the death has been given to the HIU by the Government of Ireland or any person or body recognised by the Government of Ireland as an appropriate authority for giving information to the HIU, the family report must include –
  - (a) a statement about the co-operation with the HIU given by the Government of Ireland, or the recognised person or body, in relation to the provision of information;
  - (b) if any of the information was given in a redacted form, a statement that that was the case.
- (6) The HIU must comply with subsection (7) if it is proposing to include in –
  - (a) a family report relating to a death, or
  - (b) an interim report relating to a death,any material which, in the HIU’s view, constitutes significant criticism of an individual who was involved in preventing or investigating an event of which the death forms part.
- (7) The HIU –
  - (a) must notify the individual in writing that it is proposing to include that material in the report; and
  - (b) must, in producing the report, have regard to any representations about that material made by the individual within the period of 30 days beginning with the day on which the HIU notifies the individual.
- (8) The HIU may extend that period of 30 days if the HIU is satisfied that there is good reason to do so.

- (9) In this section –  
“family report” means a report produced in accordance with section 6(7);  
“interim report” means a report produced in accordance with section 17(7).

## **19 Provision of reports to injured persons**

- (1) A person injured in an event of which a death forms part (an “injured person”) may request the HIU to provide a copy of –  
(a) a family report relating to the death produced in accordance with section 6(7), or  
(b) any interim report relating to the death produced in accordance with section 17(7).
- (2) If such a request is made, the HIU must take reasonable steps to obtain representations about the provision of the report from –  
(a) close family members of the deceased who have had contact with an HIU officer in accordance with section 22(2) or have sought or received other support or assistance in accordance with section 22(1)(b), and  
(b) such other members of the family of the deceased (including other close family members) as the Director considers appropriate.
- (3) The HIU must, in performing the functions conferred by subsections (5) and (7), have regard to any such representations that are made by a member of the family within the period of 30 days beginning with the day on which the HIU seeks representations from family members.
- (4) The HIU may extend that period of 30 days if the HIU is satisfied that there is good reason to do so.
- (5) The HIU may provide the injured person with the copy of the report that he or she has requested, if the HIU considers that it is appropriate to do so.
- (6) Subsection (5) does not authorise the HIU to provide a copy of a report unless (and until) the HIU can provide it in accordance with sections 7(2) and 27(2).
- (7) If the HIU decides to provide the injured person with the copy of the report, the HIU may remove from the copy that is provided any information which would (if not removed) cause distress to a member of the family of the deceased person from whom the HIU sought representations under this section.

## **20 Publication of reports**

- (1) The HIU may arrange for –  
(a) a family report produced in accordance with section 6(7), or  
(b) an interim report produced in accordance with section 17(7),  
to be published in the manner which the HIU considers appropriate.
- (2) Subsection (1) does not authorise the HIU to publish a copy of a report unless (and until) the HIU can publish it in accordance with sections 7(2) and 27(2).
- (3) But before arranging publication of a report, the HIU must take reasonable steps to obtain representations about the publication of the report from –

- (a) close family members of the deceased who have had contact with an HIU officer in accordance with section 22(2) or have sought or received other support or assistance in accordance with section 22(1)(b),
  - (b) such other members of the family of the deceased (including other close family members) as the Director considers appropriate, and
  - (c) any persons injured in any event of which the death forms part who have requested a copy of the report in accordance with section 19.
- (4) The HIU must, in performing the functions conferred by subsections (1) and (6), have regard to any such representations that are made by an individual within the period of 30 days beginning with the day on which the HIU seeks the representations from the individual.
- (5) The HIU may extend that period of 30 days if the HIU is satisfied that there is good reason to do so.
- (6) If the HIU arranges for publication of a report, the HIU may remove from the published report any information which would (if not removed) cause distress to—
  - (a) a member of the family of the deceased person from whom the HIU sought representations under this section, or
  - (b) a person injured in any event of which the death forms part from whom the HIU sought representations under this section.

## **21 Appeals**

- (1) This section applies if—
  - (a) the HIU notified the Secretary of State (for the purposes of paragraph 4(1)(a) of Schedule 10) of any disclosure proposed to be made in a family report or interim report relating to a death (the “proposed disclosure”), and
  - (b) the Secretary of State decided not to permit the proposed disclosure.
- (2) An appeal to the High Court against the Secretary of State’s decision not to permit the proposed disclosure in the report (the “affected report”) may be made by—
  - (a) the Director,
  - (b) a close family member of the deceased person who receives a copy of the affected report, or
  - (c) if there are no close family members of the deceased person, any other member of the family of the deceased who receives a copy of the affected report.
- (3) An appeal under this section must be brought within the period of 28 days beginning with the day on which the affected report is first provided to any member of the family of the deceased person under section 17.
- (4) The function of the court on an appeal under this section is to review the Secretary of State’s decision not to permit the proposed disclosure.
- (5) In determining an appeal under this section, the court must apply the principles applicable on an application for judicial review.
- (6) On an appeal under this section—
  - (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).
- (7) If the court does not exercise that power to quash the decision, it must dismiss the appeal.
- (8) An appeal against the determination of an appeal under subsection (2) may be made to the Court of Appeal, but only with the leave of –
  - (a) the High Court, or
  - (b) the Court of Appeal.
- (9) The court may not give such leave unless satisfied that –
  - (a) the proposed appeal would raise some important point of principle or practice, or
  - (b) there is some other compelling reason for the proposed appeal to be heard.
- (10) Proceedings on an appeal under this section (whether before the High Court, the Court of Appeal, or 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.
- (11) Sections 8 to 14 of the JSA 2013 apply in relation to proceedings treated as section 6 proceedings by subsection (10) 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.
- (12) 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 section from being considered in the presence of the Director (or the HIU’s legal representative).
- (13) In this section –
  - “Court of Appeal” means the Court of Appeal of Northern Ireland;
  - “family report” has the same meaning as in section 6;
  - “High Court” means the High Court of Northern Ireland;
  - “interim report” has the same meaning as in section 17;
  - “JSA 2013” means the Justice and Security Act 2013.

*Exercise of the function of giving support and assistance*

## **22 Support and assistance to family members**

- (1) The HIU must comply with the duty under section 6(8) to give support and other assistance to the members of the family of a person whose death is within the HIU’s remit by –
  - (a) acting in accordance with the following provisions of this section as respects close family members of the deceased;

- (b) giving such other support and other assistance to close family members of the deceased as the HIU considers appropriate; and
  - (c) giving such support and other assistance to other members of the family of the deceased as the HIU considers appropriate (which may include support and assistance of the kinds referred to in subsections (2) to (4)).
- (2) The HIU must nominate an HIU officer who is to be the point of contact between—
  - (a) the close family members of the deceased, and
  - (b) the HIU,if any close family member of the deceased requests the HIU to do so.
- (3) The HIU must secure that an HIU officer is available—
  - (a) to meet a close family member of the deceased to whom a family report or interim report is given under section 17, and
  - (b) to support the close family member through the process of receiving the report,if the close family member requests the HIU to do so.
- (4) The HIU must make information about support services available to close family members of the deceased.
- (5) Section 6(8) and this section do not require the HIU to give support or other assistance to any person who is not resident in the United Kingdom or Ireland (but this does not affect the power of the HIU to give support or other assistance, in accordance with those provisions, to such a person).
- (6) In section 6 and this section—
  - “support” and “assistance” do not include financial support and assistance;
  - “support service” means any service which provides support and other assistance to persons in the United Kingdom or Ireland (or any part of either country) who have suffered bereavement (including as a result of acts of violence or force).

### **23 Statement about the exercise of the function of giving support and assistance**

- (1) The Director must issue a statement which sets out the manner in which the HIU is to exercise its function under section 6(8) of giving support and other assistance.
- (2) The Director must—
  - (a) keep the statement under review, and
  - (b) if the Director considers it appropriate, issue a new statement (which may be wholly or partly different from the existing statement).
- (3) The HIU must have regard to the statement when exercising the function of giving support and other assistance.
- (4) The Director must consult the Commission for Victims and Survivors for Northern Ireland before issuing—
  - (a) the first statement, or
  - (b) any other statement which is, in the Director’s view, significantly different from the statement it replaces.

- (5) On each occasion when the Director issues a statement, the HIU must arrange for the statement to be published in the manner which the Director considers appropriate.

*Other provision relating to the exercise of functions*

**24 Operational powers of the Director and other HIU officers**

- (1) The Director is (by virtue of this section) designated as a person having the powers and privileges of a constable.
- (2) The Director may designate any other HIU officer as a person having the powers and privileges of a constable, if the Director is satisfied that the HIU officer –
  - (a) is capable of effectively exercising those powers and privileges;
  - (b) has received adequate training in respect of the exercise of those powers and privileges; and
  - (c) is otherwise a suitable person to exercise those powers and privileges.
- (3) The Director, and any other HIU officer who is designated under this section, may not use the powers and privileges of a constable in investigating any non-criminal police misconduct relating to a death that is within the HIU’s remit.
- (4) Schedule 7 (operational powers of the Director and other HIU officers) has effect.

**25 Full disclosure to the HIU**

- (1) A relevant authority must make available to the HIU such –
  - (a) information,
  - (b) documents, and
  - (c) other material,as the HIU may reasonably require for the purposes of, or in connection with, the exercise of any of its functions.
- (2) A relevant authority may also make available to the HIU any –
  - (a) information,
  - (b) documents, and
  - (c) other material,which, in the view of that authority, the HIU may need for the purposes of, or in connection with, the exercise of any of the HIU’s functions.
- (3) It is for the relevant authority and the HIU to agree the manner in which information, a document or other material is to be made available under this section (unless the HIU imposes a requirement under subsection (4)).
- (4) Information which the HIU requires to be made available under subsection (1) is to be made available in such manner as the HIU may reasonably require.
- (5) An agreement under subsection (3) may provide, and a requirement under subsection (4) may require, (in particular) that the relevant authority is to –
  - (a) give the information, document or other material to the HIU;
  - (b) give a copy of the information, document or other material to the HIU;

- (c) allow the HIU access to the information, document or other material while it is held by the relevant authority.
- (6) A requirement under subsection (4) (including anything required by virtue of subsection (5)) must be consistent with regulations under section 35(4) or section 36(4).
- (7) The HIU may require the Chief Constable or the Ombudsman to give the HIU such assistance as is reasonable for the purposes of, or in connection with, the effective use of information, documents and other material made available by that person under this section.
- (8) It is not a breach of –
  - (a) any obligation of confidence owed by a relevant authority, or
  - (b) any other restriction on the disclosure of information (however imposed),for a relevant authority to make information, documents and other material available to the HIU under this section.
- (9) Schedule 8 (biometric material) has effect.
- (10) In this section “copy” includes a photograph or similar representation.

## **26 Identifying information given to HIU that is subject to additional safeguards**

Schedule 9 (identification of prejudicial, sensitive or protected international information) has effect.

## **27 Onward disclosure of information by the HIU**

- (1) The HIU may disclose any information held by the HIU to any other person.
- (2) The HIU is not authorised or required (by subsection (1) or by any other power or duty) to make –
  - (a) a disclosure of information which contravenes section 7(2); or
  - (b) a disclosure of information if (in accordance with Schedule 9) the HIU has been notified by the Secretary of State that the Secretary of State has identified the information as protected international information.
- (3) But a disclosure of information that is permitted by Schedule 10 is not prohibited by subsection (2).
- (4) For the purposes of subsection (2)(a) the circumstances where a disclosure of information by the HIU contravenes section 7(2)(a) include circumstances where (in accordance with Schedule 9) –
  - (a) a relevant authority has notified the HIU that that authority has identified the information as sensitive information, or
  - (b) the HIU has identified the information as sensitive information.
- (5) The HIU is not authorised or required (by subsection (1) or by any other power or duty) to make –
  - (a) a disclosure, in contravention of any provisions of the Data Protection Act 1998, of personal data which are not exempt from those provisions; or
  - (b) a disclosure which is prohibited by Parts 1 to 7, and Chapter 1 of Part 9, of the Investigatory Powers Act 2016.



- (6) Until the coming into force of the provisions of the Investigatory Powers Act 2016 mentioned in subsection (5)(b), that subsection has effect as if the reference to those provisions were references to Part 1 of the Regulation of Investigatory Powers Act 2000.
- (7) Schedule 10 (permitted disclosures of information) has effect.
- (8) Schedule 11 (offences relating to disclosure of information) has effect.

## **28 Co-operation between the HIU and other bodies**

- (1) The HIU may co-operate with any other person for the purpose of –
  - (a) assisting that person in the exercise of the person’s functions or performance of the person’s duties, or
  - (b) assisting the HIU in the exercise of its functions.
- (2) Any person may co-operate with the HIU for the purpose of –
  - (a) assisting the HIU in the exercise of its functions, or
  - (b) assisting that person in the exercise of the person’s functions or performance of the person’s duties.
- (3) Schedule 12 (co-operation between the HIU and other bodies) has effect.

## **29 Police Service and Ombudsman’s functions and police complaints**

- (1) Section 32(1)(d) of the Police (Northern Ireland) Act 2000 does not require a police officer to take measures to bring an offender to justice for a criminal offence relating to a relevant death.
- (2) If the Police Service investigatory process in relation to a relevant death was begun before the specified day, the Police Service must not, after that day, produce any report, or statement, about its investigation for family members of the deceased.
- (3) If an HID investigation of a relevant death was begun before the specified day, the Ombudsman must not, after that day, produce a statement about that HID investigation.
- (4) The complaints provisions in the 1998 Act do not apply to any complaint or matter relating to police conduct relating to a relevant death.
- (5) In this section –
  - “complaints provisions in the 1998 Act” means –
    - (a) section 52(8) of the Police (Northern Ireland) Act 1998 (complaint to Ombudsman to be dealt with in accordance with Part 7 of that Act), and
    - (b) section 55 of that Act (consideration of matters referred by the Chief Constable etc);
  - “relevant death” means a death that –
    - (a) is part of the caseload of the Police Service Historical Enquiries Team;
    - (b) is part of the caseload of the Ombudsman’s Historical Investigations Directorate; or
    - (c) was wholly caused by physical injuries or physical illness that were or was the direct result of an act of violence or force that –

- (i) has the required connection with Northern Ireland, and
- (ii) was carried out in Northern Ireland during the period beginning with 11 April 1998 and ending with 31 March 2004;

and expressions also used in section 5 have the same meanings here as in that section.

### **30 Code of ethics**

- (1) The Policing Board must produce a code of ethics for the purpose of—
  - (a) laying down standards of conduct and practice for HIU officers and members of the HIU, and
  - (b) making HIU officers and members of the HIU aware of—
    - (i) the HIU’s human rights obligations, and
    - (ii) the HIU’s obligations under section 75 of the Northern Ireland Act 1998.
- (2) A draft of the code is to be submitted by the Director to the Policing Board for it to consider.
- (3) The Policing Board may adopt the draft code—
  - (a) as submitted by the Director, or
  - (b) with such amendments as the Policing Board may determine, after consultation with the HIU.
- (4) The Policing Board may revise or replace the code of ethics, after consultation with the HIU.
- (5) The Policing Board must publish the current code of ethics in the manner which the Policing Board considers appropriate.
- (6) The Policing Board must consult the persons specified in subsection (7)—
  - (a) before issuing or replacing the code of ethics, and
  - (b) before making any revision of the code of ethics which is, in the Policing Board’s view, a significant revision.
- (7) Those persons are—
  - (a) the Department of Justice;
  - (b) the Northern Ireland Human Rights Commission;
  - (c) the Equality Commission for Northern Ireland;
  - (d) the Chief Constable;
  - (e) the Ombudsman;
  - (f) any other person appearing to the Policing Board to have an interest in the matter.
- (8) The Director must take such steps as it considers necessary to ensure—
  - (a) that all HIU officers and members of the HIU have read and understood the code as currently in force, and
  - (b) that a record is made and kept of the steps taken in relation to each of those HIU officers and members of the HIU.
- (9) In carrying out their duties, HIU officers and members of the HIU are to be guided by the code of ethics.

*Oversight, inspection and reporting*

**31 Complaints and discipline**

- (1) The HIU must establish –
  - (a) a procedure for dealing with complaints about the HIU or HIU officers, and
  - (b) a procedure for disciplining HIU officers.
- (2) The HIU may revise or replace a procedure established under this section.
- (3) The HIU must publish each of the current procedures in the manner which the HIU considers appropriate.
- (4) The procedure for dealing with complaints must include –
  - (a) a description of the way in which complaints are to be made;
  - (b) a description of the way in which complaints will be dealt with;
  - (c) a description of the possible outcomes of any complaint (including sanctions which may be imposed).
- (5) A procedure established under this section may provide for –
  - (a) complaints, or
  - (b) disciplinary matters,to be referred to a committee of the HIU (see paragraph 3 of Schedule 1).
- (6) Schedule 13 (establishment of procedure for investigation of complaints by Ombudsman) has effect.
- (7) Subsections (1) to (5) do not require the HIU to establish procedures relating to any matter that is dealt with by any procedure established under Schedule 13.

**32 Inspection and oversight of the HIU etc**

- (1) Schedule 14 (inspection of the HIU) has effect.
- (2) Schedule 15 (oversight of the HIU) has effect.
- (3) In exercising functions in relation to the HIU, the Policing Board must have regard to –
  - (a) the HIU’s duty to exercise its functions in accordance with section 7; and
  - (b) the need for the Policing Board –
    - (i) to co-ordinate its activities with those of other statutory authorities, and
    - (ii) to co-operate with such authorities.
- (4) Section 3(4) of the Police (Northern Ireland) Act 2000 does not apply to the Policing Board in carrying out its functions under this Part.
- (5) In exercising functions in relation to the HIU –
  - (a) the Department of Justice, and
  - (b) the Secretary of State,must have regard to the HIU’s duty to exercise its functions in accordance with section 7.
- (6) In this section “statutory authority” means –

- (a) a body constituted under an enactment having effect in Northern Ireland; or
- (b) a person holding office under an enactment having effect in Northern Ireland.

### 33 Reporting and information for oversight

Schedule 16 (reporting and information for oversight) has effect.

#### *Supplementary*

### 34 Guidance and protocols relating to information

- (1) The Secretary of State may give guidance about the identification of sensitive information to—
  - (a) the HIU;
  - (b) the Northern Ireland departments;
  - (c) the Chief Constable;
  - (d) the Ombudsman;
  - (e) the inspectors of constabulary;
  - (f) the Chief Inspector of Criminal Justice in Northern Ireland.
- (2) The Secretary of State may give guidance to the HIU about the exercise of its functions under section 7(2)(a).
- (3) If a person is given guidance under subsection (1), the person must have regard to it in identifying information as sensitive information in accordance with—
  - (a) Schedule 9;
  - (b) paragraph 3(2) of Schedule 14;
  - (c) section 49(1D) of the Justice (Northern Ireland) Act 2002.
- (4) The HIU must have regard to any guidance given under subsection (2) in exercising the functions to which the guidance relates.
- (5) Any guidance under this section—
  - (a) may be varied or revoked by further guidance;
  - (b) may make different provision for different cases.
- (6) An information disclosure protocol may be agreed between the HIU and one or more of—
  - (a) the relevant authorities, and
  - (b) the persons listed in paragraph 3(1) of Schedule 10.
- (7) An “information disclosure protocol” is a document dealing with a framework for the disclosure of information by, or to, the HIU.

### 35 Regulation-making powers of the Department of Justice

- (1) The Department of Justice may, by regulations, make such provision as the Department considers appropriate in consequence of—
  - (a) designated HIU officers, or
  - (b) a description of designated HIU officers,having the powers and privileges of constables in accordance with Schedule 7.

- (2) Those regulations may (in particular) –
  - (a) provide for designated HIU officers to benefit from exemptions or other protection in respect of the exercise of operational powers;
  - (b) provide for the disclosure of information to, or the doing of other things in relation to, designated HIU officers;
  - (c) confer functions on the Director or any other person;
  - (d) provide for a class of HIU officers (whether identified by reference to a grade or pay scale or otherwise) to be treated as the equivalent of one or more ranks of the Police Service;
  - (e) apply (with or without modifications) any enactment, or description of enactments, having effect in Northern Ireland.
- (3) In subsections (1) and (2) expressions that are also used in Schedule 7 have the same meaning as in that Schedule.
- (4) The Department of Justice may, by regulations, make provision about the holding and handling by the HIU of prejudicial information identified under Schedule 9.
- (5) Those regulations may (in particular) –
  - (a) make provision about notifications to be given by the HIU in respect of information it holds;
  - (b) make provision about measures for holding and handling information securely (including physical, electronic, organisational or systemic measures);
  - (c) make provision about the destruction or transfer of information which the HIU is to cease to hold;
  - (d) make provision about guidance or consultation;
  - (e) confer functions on the Department of Justice or any other person (as well as on the HIU);
  - (f) create criminal offences.
- (6) For the purposes of subsection (4), information is prejudicial information identified under Schedule 9 if (in accordance with Schedule 9) –
  - (a) a relevant authority has notified the HIU that that authority has identified the information as prejudicial information; or
  - (b) the HIU has identified the information as prejudicial information.
- (7) A criminal offence created under subsection (5)(f) –
  - (a) may only apply to the conduct of persons who are or have been –
    - (i) the Director,
    - (ii) one of the other members of the HIU,
    - (iii) an HIU officer,
    - (iv) a person who has made a contract with the HIU to provide services to the HIU, or
    - (v) any person who provides, or is employed in provision of, goods or services for the purposes of the HIU;
  - (b) may not impose a penalty that is greater than a penalty that may be imposed for an offence under Schedule 11.
- (8) For other regulation-making powers conferred on the Department of Justice by this Part, see section 37 and Schedules 8 and 13.

**36 Regulation-making powers of the Secretary of State**

- (1) The Secretary of State may, by regulations, make such provision as the Secretary of State considers appropriate in consequence of –
  - (a) designated HIU officers, or
  - (b) a description of designated HIU officers,having the powers and privileges of constables in accordance with Schedule 7.
- (2) Those regulations may (in particular) –
  - (a) provide for designated HIU officers to benefit from exemptions or other protection in respect of the exercise of operational powers;
  - (b) provide for the disclosure of information to, or the doing of other things in relation to, designated HIU officers;
  - (c) confer functions on the Director or any other person;
  - (d) provide for a class of HIU officers (whether identified by reference to a grade or pay scale or otherwise) to be treated as the equivalent of one or more ranks of the Police Service;
  - (e) apply (with or without modifications) any enactment or description of enactments.
- (3) In subsections (1) and (2) expressions that are also used in Schedule 7 have the same meaning as in that Schedule.
- (4) The Secretary of State may, by regulations, make provision about the holding and handling by the HIU of information, other than prejudicial information identified under Schedule 9 (but including sensitive information, or protected international information, identified under Schedule 9).
- (5) Those regulations may (in particular) –
  - (a) make provision about notifications to be given by the HIU in respect of information it holds;
  - (b) make provision about measures for holding and handling information securely (including physical, electronic, organisational or systemic measures);
  - (c) make provision about the destruction or transfer of information which the HIU is to cease to hold;
  - (d) make provision about guidance or consultation;
  - (e) confer functions on the Secretary of State or any other person (as well as on the HIU);
  - (f) create criminal offences.
- (6) For the purposes of subsection (4) –
  - (a) information is sensitive information identified under Schedule 9 if (in accordance with Schedule 9) –
    - (i) a relevant authority has notified the HIU that that authority has identified the information as sensitive information; or
    - (ii) the HIU has identified the information as sensitive information;
  - (b) information is protected international information identified under Schedule 9 if (in accordance with Schedule 9) the Secretary of State has identified the information as protected international information.
- (7) A criminal offence created under subsection (5)(f) –
  - (a) may only apply to the conduct of persons who are or have been –
    - (i) the Director,

- (ii) one of the other members of the HIU,
  - (iii) an HIU officer,
  - (iv) a person who has made a contract with the HIU to provide services to the HIU, or
  - (v) any person who provides, or is employed in provision of, goods or services for the purposes of the HIU;
- (b) may not impose a penalty that is greater than a penalty that may be imposed for an offence under Schedule 11.
- (8) For other regulation-making powers conferred on the Secretary of State by this Part, see section 37 and Schedule 8.

### **37 Conclusion of the HIU’s work**

- (1) Except as otherwise provided under this section, the investigatory function of the HIU ceases to be exercisable at the end of the period of 5 years beginning with the specified day.
- (2) The Secretary of State may, by regulations, provide that the investigatory function of the HIU –
- (a) is not to cease to be exercisable at the time when it would otherwise cease to be exercisable in accordance with subsection (1) or regulations under this subsection; but
  - (b) is to continue to be exercisable after that time for a period not exceeding one year.
- (3) The Department of Justice or the Secretary of State may, by regulations, make provision for winding up the HIU –
- (a) in connection with the investigatory function of the HIU ceasing to be exercisable in accordance with subsection (1) or regulations under subsection (2); or
  - (b) at any other time.
- (4) If provision is made under subsection (3) (whether by the Department of Justice or Secretary of State), the Department of Justice or the Secretary of State may, by regulations, repeal any of the provisions of this Part other than –
- (a) this section;
  - (b) paragraph 3(1)(b), (2), (3)(b) and (6) of Schedule 12;
  - (c) paragraphs 2 to 4 of Schedule 11 and the following provisions (which relate to the offence in paragraph 2 of that Schedule) –
    - (i) section 7(2)(a) and (b);
    - (ii) section 27(1) to (4) and (7) and (8);
    - (iii) section 39;
    - (iv) Schedule 10.
- (5) The Secretary of State must consult the specified consultees –
- (a) about whether the power conferred by subsection (2) should be exercised;
  - (b) before making regulations under this section.
- (6) The Department of Justice must consult the specified consultees before making regulations under this section.
- (7) The “specified consultees” are –

- (a) the HIU,
- (b) the Department of Justice (except where the consultation concerns the making of regulations by the Department),
- (c) the Secretary of State (except where the consultation concerns the making of regulations by him or her),
- (d) the First Minister and the deputy First Minister,
- (e) the Implementation and Reconciliation Group,
- (f) the Policing Board,
- (g) the Attorney General for Northern Ireland,
- (h) the Director of Public Prosecutions for Northern Ireland,
- (i) any other person the Department of Justice considers appropriate (where the consultation concerns the making of regulations by the Department), and
- (j) any other person the Secretary of State considers appropriate (where the consultation concerns the making of regulations by him or her).

### 38 Limitations on exercise of regulation-making powers

- (1) This section applies to regulations made under any provision of this Part.
- (2) The Secretary of State may not make transferred provision in regulations without the consent of the Northern Ireland Assembly.
- (3) Regulations made by the Department of Justice may only make –
  - (a) transferred provision, or
  - (b) reserved provision.
- (4) But the Department of Justice may not make reserved provision without the consent of the Secretary of State.

### 39 Interpretation of Part 2

In this Part –

- (a) any expression defined in Schedule 3 or 4 has the same meaning as in that Schedule;
- (b) each expression set out in an entry in the first column of the following table is to be read in accordance with the corresponding entry in the second column –

<i>Expression</i>	<i>Interpretation</i>
Chief Constable	The Chief Constable of the Police Service.
chief officer	This means – <ul style="list-style-type: none"> <li>(a) the chief constable of a police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);</li> <li>the Commissioner of Police of the Metropolis;</li> <li>the Commissioner of Police for the City of London;</li> </ul>



<i>Expression</i>	<i>Interpretation</i>
	<p>the chief constable of the Police Service of Scotland;</p> <p>the chief constable of the Ministry of Defence Police;</p> <p>the chief constable of the British Transport Police.</p>
criminal offence relating to a death	<p>A criminal offence that is closely related to a death.</p> <p>It includes –</p> <p>(a) a criminal offence comprised in a course of conduct leading to the death,</p> <p>(b) a criminal offence comprised in a course of conduct following from the death, and</p> <p>(c) a criminal offence relating to any investigation, arrest or prosecution which concerns the death.</p>
Director	The Director of the HIU.
financial year	This has the meaning given in section 4(5) and (6).
Her Majesty’s forces	This has the same meaning as in the Armed Forces Act 2006 (see section 374 of that Act).
HIU	The Historical Investigations Unit.
HIU officer	<p>This means –</p> <p>(a) a person employed as an Historical Investigations Unit officer under section 3(3),</p> <p>(b) a person seconded as an Historical Investigations Unit officer under section 3(4), and</p> <p>(c) (subject to paragraph 15 of Schedule 2) the Director in his or her capacity as an Historical Investigations Unit officer.</p>
inspector of constabulary	An inspector of constabulary for Northern Ireland (appointed under section 41 of the Police (Northern Ireland) Act 1998).
investigatory function	The function conferred by section 6(1).
member (in relation to the HIU)	The Director and other members referred to in section 3(1).
Minister of Justice	The Minister of Justice in Northern Ireland.

<i>Expression</i>	<i>Interpretation</i>
non-criminal police misconduct	Misconduct (excluding any conduct which constitutes a criminal offence) by a member of—  (a) the Royal Ulster Constabulary, (b) the Royal Ulster Constabulary Reserve, (c) the Police Service of Northern Ireland, or (d) the Police Service of Northern Ireland Reserve.
non-criminal police misconduct relating to a death	Non-criminal police misconduct that is closely related to a death.  It includes—  (a) non-criminal police misconduct comprised in a course of conduct leading to the death, (b) non-criminal police misconduct comprised in a course of conduct following from the death, and (c) non-criminal police misconduct relating to any investigation, arrest or prosecution which concerns the death.
Ombudsman	The Police Ombudsman for Northern Ireland.
Ombudsman’s Historical Investigations Directorate	The Historical Investigations Directorate established by the Ombudsman.
police force in Great Britain	This means—  (a) a police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London); (b) the metropolitan police force; (c) the City of London police force; (d) the Police Service of Scotland; (e) the Ministry of Defence Police; (f) the British Transport Police.
Police Service	The Police Service of Northern Ireland.
Police Service Historical Enquiries Team	The Historical Enquiries Team within the Police Service.

<i>Expression</i>	<i>Interpretation</i>
Policing Board	The Northern Ireland Policing Board.
prejudicial information	Information which, if disclosed generally, might put at risk the life or safety of any person.
protected international information	Information which – (a) was supplied to any person by, or by an agency of, the government of a country or territory outside the United Kingdom, and (b) if disclosed generally might, in the opinion of the Secretary of State, damage international relations.
relevant authority	This means – (a) the Chief Constable; (b) the Ombudsman; (c) any Minister of the Crown; (d) the Security Service; (e) the Secret Intelligence Service; (f) GCHQ (which has the same meaning as in the Intelligence Services Act 1994); (g) any other department of the United Kingdom government (including a non-ministerial department); (h) a Northern Ireland department; (i) any of Her Majesty’s forces.
Reserve	The Police Service of Northern Ireland Reserve.
sensitive information	This means information of the following kinds. Information which, if disclosed generally, might prejudice the national security interests of the United Kingdom. Information which has been supplied (whether to the person currently holding the information or to some other person) by – (a) the Security Service, (b) the Secret Intelligence Service,

<i>Expression</i>	<i>Interpretation</i>
	<p>(c) GCHQ (which has the same meaning as in the Intelligence Services Act 1994), or</p> <p>(d) any part of Her Majesty’s forces, of the Ministry of Defence, or of the Police Service which engages in intelligence activities.</p>

### PART 3

#### THE INDEPENDENT COMMISSION ON INFORMATION RETRIEVAL

#### 40 The Independent Commission on Information Retrieval

- (1) In this Part –
  - (a) “the Commission” means the Independent Commission on Information Retrieval established by an agreement made between Her Majesty’s Government in the United Kingdom and the Government of Ireland on 15 October 2015;
  - (b) “ICIR agreement” means the agreement referred to in paragraph (a) by which the Commission is established.
- (2) The Commission has the legal capacity of a body corporate.
- (3) The Secretary of State may provide the Commission with such moneys, premises, facilities and services as the Secretary of State considers appropriate.
- (4) The First Minister and the deputy First Minister have the power jointly to appoint two members of the Commission in accordance with the ICIR agreement.

#### 41 Functions of the Commission

- (1) The Commission must –
  - (a) seek and receive information about deaths within the remit of the Commission about which eligible family requests are made; and
  - (b) receive information about other deaths within the remit of the Commission.
- (2) In cases where an eligible family request for information about a death is made, the Commission must keep the person who made the request informed about the progress of the request.
- (3) The Commission must prepare and provide reports in accordance with section 42 (the “reporting function”).
- (4) The Commission has the other functions conferred by the ICIR agreement.
- (5) The Commission must exercise its functions in accordance with the provisions of this Part and the ICIR agreement.
- (6) In particular, the Commission must exercise the reporting function in accordance with section 46 and Article 11 of the ICIR agreement.

## 42 The reporting function

- (1) If a person makes an eligible family request for information about a death within the remit of the Commission, the Commission must provide a written report to that person at the conclusion of its enquiries into that death (a “family report”).
- (2) A family report must contain only information the credibility of which has been established to the satisfaction of the Commission
- (3) The Commission must provide the Implementation and Reconciliation Group with a written report on –
  - (a) patterns and themes it has identified from its work, and
  - (b) the level of co-operation it has received in carrying out its work.
- (4) Subsection (3) does not prevent the Commission from providing the Implementation and Reconciliation Group with an interim written report on any of those matters before the Commission provides the Group with the report in accordance with that subsection.
- (5) The Commission must provide the Implementation and Reconciliation Group with the report under subsection (3) on the last day of the period of 5 years beginning with the day on which this section comes into force (or, if that day is not a working day, on the last working day before it).
- (6) A report provided to the Implementation and Reconciliation Group in accordance with subsection (3) or (4) –
  - (a) must be given by the Commission only to the person chairing that Group; and
  - (b) must not be otherwise disclosed by the Commission unless –
    - (i) the report has been shared by the person chairing that Group in accordance with section 61 and that person has authorised the Commission to disclose the report, or
    - (ii) the academic report commissioned in accordance with section 62 has been produced.
- (7) The Commission must publish an annual report (an “ICIR annual report”) on –
  - (a) the finances of the Commission;
  - (b) the administration of the Commission;
  - (c) the number of requests for information made to the Commission;
  - (d) the number of family reports that have been provided to persons requesting them; and
  - (e) other data relating to the volume of information about deaths received by the Commission.
- (8) Each ICIR annual report must include a statement of the number of notifications under section 46(2)(b) which the Secretary of State has, in the financial year concerned, given to the Commission.
- (9) The Commission must provide copies of each ICIR annual report to –
  - (a) Her Majesty’s Government in the United Kingdom, and
  - (b) the Government of Ireland.
- (10) The Commission must provide copies of each ICIR annual report to –
  - (a) the Historical Investigations Unit,
  - (b) the Deputy Keeper of Records of Northern Ireland, and

- (c) the Implementation and Reconciliation Group.

#### **43 Responsibilities in exercising functions**

- (1) The Commission must exercise its functions in a manner that is consistent with the general principles.
- (2) The Commission must not do anything in carrying out its functions which might –
  - (a) prejudice the national security interests of Ireland or the United Kingdom,
  - (b) put at risk the life or safety of any person, or
  - (c) have a prejudicial effect on any actual or prospective legal proceedings in the United Kingdom or Ireland.
- (3) The Commission must not –
  - (a) disclose the name or identity of any individual from whom the Commission has received information about a death within its remit;
  - (b) in a case where the Commission has received information about a death within its remit, disclose the name or identity of any individual who is identified by that information as being responsible –
    - (i) for the death; or
    - (ii) for any act from which the death resulted.
- (4) In this section –

“legal proceedings” has the meaning given in section 45(3);

“prospective legal proceedings”, in relation to any exercise of functions by the Commission, means legal proceedings which, in the view of the Commission, are likely to be brought within a reasonable period after that exercise of functions.

#### **44 Legal privileges etc**

- (1) Except in so far as in any particular case any privilege or immunity is waived by the Commission, the Commission has immunity from suit and legal process.
- (2) Except in so far as in any particular case the Commission waives it, the Commission has the like inviolability of official archives and premises as in accordance with the 1961 Convention Articles is accorded in respect of the official archives and premises of a diplomatic mission.
- (3) But the Commission may not waive any inviolability of official archives in so far as they contain –
  - (a) information about deaths within the Commission’s remit, and
  - (b) records that relate to such information.
- (4) The Secretary of State may by regulations –
  - (a) confer on the Commission, in such cases, to such extent and with such modifications as the regulations may specify, any of the privileges and immunities set out in Part 1 of Schedule 1 to the International Organisations Act 1968 which are not conferred by subsections (1) and (2);
  - (b) confer on members and staff of the Commission and members of their families who form part of their households, in such cases, to such extent

and with such modifications as the regulations may specify, any of the privileges and immunities set out in Parts 2, 3 and 5 of Schedule 1 to the International Organisations Act 1968;

- (c) make provision about the waiver of such privileges and immunities.
- (5) The reference in subsection (4)(b) to staff of the Commission includes agents of, and persons carrying out work for or giving advice to, the Commission.
- (6) In this section “the 1961 Convention Articles” means the Articles (being certain Articles of the Vienna Convention on Diplomatic Relations signed in 1961) which are set out in Schedule 1 to the Diplomatic Privileges Act 1964.

#### **45 Information provided to Commission: no amnesty, information inadmissible**

- (1) This section deals with the effects on legal proceedings if information about a death within the Commission’s remit is provided to the Commission.
- (2) The provision of the information to the Commission does not give any person an amnesty for any criminal offence.
- (3) The information is not admissible in any legal proceedings – which, in this Part, means any criminal or civil proceedings, including proceedings before a coroner or an inquiry under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015.
- (4) Subsection (3) does not affect the admissibility of information which is held by a person other than the Commission, unless that information has been obtained from the Commission.
- (5) In this section “amnesty for any criminal offence” means immunity from prosecution for any criminal offence.

#### **46 Arrangements to assist the Commission to meet its obligations**

- (1) Before providing a report to any recipient in accordance with the reporting function, the Commission must give a draft of the report to the Secretary of State.
- (2) The Secretary of State may, during the relevant decision period, notify the Commission either that, in the Secretary of State’s view –
  - (a) none of the information contained in the report would prejudice the national security interests of the United Kingdom (as referred to in section 43(2)(a)) or put at risk the life or safety of any person in the United Kingdom (as referred to in section 43(2)(b)); or
  - (b) information contained in the report would cause that prejudice or cause that risk.
- (3) A notification under subsection (2)(b) must identify the particular information which would, in the Secretary of State’s view, cause the prejudice referred to in section 43(2)(a) or the risk referred to in section 43(2)(b).
- (4) The Commission must not provide the report to any recipient in accordance with the reporting function unless –
  - (a) the Secretary of State gives a notification under subsection (2)(a);
  - (b) the Secretary of State gives a notification under subsection (2)(b) and, before providing the report to the recipient, the Commission excludes from it all information identified in accordance with subsection (3); or

- (c) the relevant decision period ends without the Secretary of State giving a notification under subsection (2)(a) or (b).
- (5) In a case where—
  - (a) the Secretary of State gives a notification under subsection (2)(b), and
  - (b) the Commission does not provide the report in accordance with subsection (4)(b),
 this section does not prevent the Commission from producing a different report in accordance with the reporting function (and this section applies again in relation to provision of any different report that is produced).
- (6) In this section “relevant decision period” means the period of 60 days beginning with the day on which a draft of a report is given to the Secretary of State.

#### **47 Offence: member of Commission causes breach of section 46 arrangements**

- (1) A person who is a member of the Commission is guilty of an offence if any act or omission by the person causes the Commission to breach the duty imposed by section 46(4).
- (2) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;
  - (b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;
  - (c) on summary conviction in England and Wales, to imprisonment for a term not exceeding twelve months or a fine or both;
  - (d) on summary conviction in Scotland, to imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum or both;
 but, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in paragraph (c) to twelve months is to be read as a reference to six months.
- (3) For the purposes of this section it does not matter whether an act or omission by a member of the Commission occurs within or outside the United Kingdom.

#### **48 Offence: unauthorised disclosure by member of Commission or employee etc**

- (1) A person who is the holder of a relevant position is guilty of an offence if—
  - (a) the person discloses information about a death within the Commission’s remit,
  - (b) the person obtained the information in his or her capacity as the holder of a relevant position, and
  - (c) the person is not authorised by the Commission to make the disclosure on the Commission’s behalf.
- (2) It is a defence for a person charged with an offence under subsection (1) to prove that he or she reasonably believed that the Commission had authorised him or her to make the disclosure.
- (3) A person who has ceased to be the holder of a relevant position is guilty of an offence if—



- (a) the person discloses information about a death within the Commission's remit, and
  - (b) the person obtained the information in his or her capacity as the holder of a relevant position.
- (4) The communication of information to a person who holds a relevant position is not a disclosure of the information for the purposes of this section.
- (5) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;
  - (b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;
  - (c) on summary conviction in England and Wales, to imprisonment for a term not exceeding twelve months or a fine or both;
  - (d) on summary conviction in Scotland, to imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum or both;
- but, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in paragraph (c) to twelve months is to be read as a reference to six months.
- (6) The offences in this section do not apply to a disclosure of information which occurs in Ireland; but, subject to that, for the purposes of this section it does not matter whether a disclosure of information occurs within or outside the United Kingdom.
- (7) A reference in this section to a person holding a relevant position is a reference to the person being –
- (a) a member of the Commission,
  - (b) a member of the staff of the Commission, or
  - (c) an agent of, or person carrying out work for or giving advice to, the Commission.

#### **49 Conclusion of the Commission's work**

- (1) At the end of the period when the Commission's functions are exercisable, the Commission must destroy –
- (a) all the information it holds about deaths within its remit, and
  - (b) all the records it holds that relate to such information.
- (2) The Secretary of State may, by regulations, make provision for winding up the ICIR.
- (3) If regulations are made under subsection (2), the Secretary of State may repeal any of these provisions –
- (a) sections 40 to 43;
  - (b) sections 46 and 47;
  - (c) section 50.
- (4) Before making regulations under this section, the Secretary of State must consult –
- (a) the Government of Ireland, and
  - (b) any other person the Secretary of State considers appropriate.

- (5) The provision that may be made in regulations under this section by virtue of section 66(8) includes provision to secure that the information and records referred to in (1) are destroyed (whether by the Commission, one or more members of it, or otherwise).
- (6) In this section “period when the Commission’s functions are exercisable” means –
  - (a) the period of five years referred to in paragraph 5 of Article 7 of the ICIR agreement, or
  - (b) any other period which is agreed between Her Majesty’s Government in the United Kingdom and the Government of Ireland as the period during which the Commission’s functions are exercisable.

## **50 Interpretation of Part 3**

- (1) This Part must be read in accordance with this section.
- (2) A death is within the remit of the Commission if the death was wholly caused by physical injuries or physical illness that were or was the direct result of an act of violence or force carried out in Ireland, the United Kingdom or the rest of Europe between 1 January 1966 and 10 April 1998 –
  - (a) for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between persons there, or
  - (b) in connection with preventing, investigating, or otherwise dealing with the consequences of, an act intended to be done, or done, for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between persons there.
- (3) An eligible family request is –
  - (a) a request made by a person who –
    - (i) is a close family member of the deceased, and
    - (ii) meets the residency qualification; or
  - (b) a request made by a person who –
    - (i) is a close family member of the deceased, but
    - (ii) does not meet the residency qualification,which the Commission is satisfied that it is nevertheless appropriate to accept; or
  - (c) a request made by a person who is a relative of the deceased (other than a close family member) if the Commission is satisfied –
    - (i) that no close family member of the deceased objects to the request, and
    - (ii) that it is appropriate to accept the request (having regard, in particular, to the family and personal relationships between the person and the deceased and to whether the person meets the residency qualification).
- (4) A person who requests information about a death meets the “residency qualification” if the person –
  - (a) was resident in Ireland or the United Kingdom at the time of the death, or
  - (b) is resident in Ireland or the United Kingdom at the time the request is made.
- (5) In this Part “reporting function” has the meaning given in section 41(3).

## PART 4

### THE ORAL HISTORY ARCHIVE

#### 51 The oral history archive

- (1) The Public Record Office has the function of organising an oral history archive which relates to –
  - (a) events that have the required connection with Northern Ireland and occurred in Northern Ireland or Ireland during the period beginning with 1 January 1966 and ending with 10 April 1998; and
  - (b) other significant events that have the required connection with Northern Ireland.
- (2) An “oral history archive” is a collection of records which recount personal experiences (“oral history records”) and which are of lasting historical significance.
- (3) The oral history records in the archive may take any form, including –
  - (a) audio, visual and audio-visual records;
  - (b) transcripts.
- (4) There is no requirement for oral history records to be records that are public in nature.
- (5) The oral history archive may include (in addition to oral history records made by or on behalf of the Public Record Office) oral history records which have been, or are, made (at any time) by other persons (whether received by the archive from the person who made them or from another person).
- (6) The Deputy Keeper must make arrangements for the Public Record Office –
  - (a) to identify other organisations which have made, or make, oral history records, and
  - (b) to inform those other organisations of the possibility of the oral history records made by them being included in the archive.
- (7) The oral history archive may also include records (“other relevant records”) which are not oral history records (including catalogues and indexes, and records which would or might be regarded in other contexts as ephemera), but only if they –
  - (a) are ancillary to oral history records in the archive, and
  - (b) would assist the orderly preservation of, and access to, the archive.
- (8) The “function of organising” the oral history archive consists of the functions of –
  - (a) inviting the contribution of oral history records,
  - (b) making oral history records of experiences recounted by other persons,
  - (c) otherwise receiving oral history records and other relevant records,
  - (d) preserving the archive (including by enhancing or changing the format in which records are kept), and
  - (e) making the archive publicly available, except to the extent that it is appropriate or necessary for particular records not to be made publicly available.

- (9) The function of organising the oral history archive is to be exercised in accordance with the other provisions of this Part.
- (10) The records in the oral history archive may be received from persons in the United Kingdom, Ireland or elsewhere.
- (11) The functions conferred by this section are in addition to the functions which the Public Record Office has under the Public Records Act (Northern Ireland) 1923 and any other enactment.
- (12) For the purposes of this section an event has “the required connection with” Northern Ireland if it occurred for a reason related to –
  - (a) the constitutional status of Northern Ireland, or
  - (b) sectarian or political hostility between persons in Northern Ireland.

## **52 The role of the Deputy Keeper**

- (1) The archive is under the charge and superintendence of the Deputy Keeper.
- (2) The Deputy Keeper must exercise functions in relation to the archive in a manner that is consistent with the general principles.
- (3) It is for the Deputy Keeper (in particular) –
  - (a) to decide which oral history records and other relevant records should form part of the archive;
  - (b) to decide whether an event of the kind referred to in section 51(1)(b) is sufficiently significant to merit the inclusion of oral history records relating to the event in the archive;
  - (c) to decide the extent to which it is appropriate or necessary for particular records that form part of the archive not to be made publicly available;
  - (d) to dispose of, by destruction or otherwise, any records which are not to form, or are to cease to form, part of the archive.
- (4) That power to dispose of records may (in particular) be exercised to dispose of –
  - (a) records which the Deputy Keeper has decided should not form part of the archive;
  - (b) records in respect of which any required consent has not been given.
- (5) The Deputy Keeper must issue a statement which sets out the manner in which the Deputy Keeper is to exercise his or her functions in relation to the archive.
- (6) The Deputy Keeper must superintend the persons employed in the Public Record Office in keeping the archive.
- (7) Persons appointed under section 2(3) of the 1923 Act are to assist in exercising the function of organising the archive under the superintendence of the Deputy Keeper (whether or not they also assist in executing the 1923 Act).
- (8) A Northern Ireland department may not give the Deputy Keeper any direction in respect of the Deputy Keeper’s duties under this section.
- (9) The Deputy Keeper –
  - (a) must make arrangements to appoint a group of at least five persons (the “steering group”) who, in the Deputy Keeper’s view, have (between them) experience of obtaining oral history records in Northern Ireland

and experience of obtaining oral history records outside Northern Ireland;

- (b) must consult the steering group when issuing the statement – or any revision of the statement – that is required by subsection (5);
  - (c) must, when exercising functions in relation to the archive, have regard to any advice which the steering group has given to the Deputy Keeper on the manner of the exercise of the functions.
- (10) This section is subject to –
- (a) section 55 (and any rules made under it), and
  - (b) rules made under section 56.
- (11) In this section –
- “1923 Act” means the Public Records Act (Northern Ireland) 1923;
  - “required consent” means any consent required to be given in order for an oral history record to form part of the archive (including any consent required by rules under section 56(2)(b)).

### **53 Annual report**

- (1) Once in every year, the Deputy Keeper must produce and publish a report on the exercise of the function of organising the archive (including the performance of the duties of the Deputy Keeper in connection with the exercise of that function).
- (2) At least two weeks before the date when the Deputy Keeper is proposing to publish an annual report, the Deputy Keeper must –
  - (a) give a copy of the annual report to the First Minister, the deputy First Minister and the relevant Northern Ireland department, and
  - (b) notify them all of the proposed date of publication.
- (3) The relevant Northern Ireland department must lay a copy of the annual report before the Northern Ireland Assembly on the day that it is published by the Deputy Keeper (or as soon as practicable afterwards).
- (4) The Deputy Keeper must give a copy of each annual report to –
  - (a) the Historical Investigations Unit,
  - (b) the Independent Commission on Information Retrieval, and
  - (c) the Implementation and Reconciliation Group.

### **54 Report to the Implementation and Reconciliation Group**

- (1) The Deputy Keeper must provide the Implementation and Reconciliation Group with a written report on patterns and themes the Deputy Keeper has identified from the exercise of the function of organising the archive.
- (2) Subsection (1) does not prevent the Deputy Keeper from providing the Implementation and Reconciliation Group with an interim written report on any of those matters before the Deputy Keeper provides the Group with the report in accordance with that subsection.
- (3) The Deputy Keeper must provide the Implementation and Reconciliation Group with the report under subsection (1) on the last day of the period of 5 years beginning with the day on which this section comes into force (or, if that day is not a working day, on the last working day before it).

- (4) A report provided to the Implementation and Reconciliation Group in accordance with this section –
  - (a) must be given by the Deputy Keeper only to the person chairing that Group; and
  - (b) must not be otherwise disclosed by the Deputy Keeper unless –
    - (i) the report has been shared by the person chairing that Group in accordance with section 61 and that person has authorised the Deputy Keeper to disclose the report, or
    - (ii) the academic report commissioned in accordance with section 62 has been produced.

## 55 Procedure for disposing of records not forming part of the archive

- (1) Before the Deputy Keeper disposes of any records (by destruction or otherwise), the Deputy Keeper must –
  - (a) prepare a schedule of the proposed disposals, and
  - (b) give the relevant Northern Ireland department a copy of the schedule which has been prepared.
- (2) The relevant Northern Ireland department must lay a copy of the schedule before the Northern Ireland Assembly as soon as practicable after being given it by the Deputy Keeper.
- (3) A record listed in the schedule must not be disposed of as proposed if, within the relevant ten sitting days, the Northern Ireland Assembly passes a resolution requiring the preservation of the record.
- (4) A “schedule of the proposed disposals” is a schedule which shows –
  - (a) a list of the records proposed to be disposed of, and
  - (b) such particulars as to their character and contents as may be calculated to enable the Northern Ireland Assembly to judge of the expediency of disposing of such records in the proposed manner.
- (5) Where there are several records of the same class or description, the schedule may classify them, as far as practicable, according to their nature and contents, instead of specifying each record separately.
- (6) The relevant Northern Ireland department may make rules about the disposal of records in accordance with this section.
- (7) The rules may (in particular) require the Deputy Keeper to obtain the agreement of not more than six specified departmental officials before giving a schedule of the proposed disposals to the relevant Northern Ireland department.
- (8) The rules may not confer power to give directions to the Deputy Keeper or any other employee of the Public Record Office.
- (9) Before making rules under this section, the relevant Northern Ireland department must consult the steering group appointed under section 52(9)(a).
- (10) In this section –

“relevant ten sitting days”, in relation to a schedule laid before the Assembly under this section, means the next ten days on which the Assembly is sitting after the day on which the schedule was laid;

“specified departmental official” means a civil servant in the relevant Northern Ireland department who is of a description specified in rules made under this section.

## **56 Power to make rules**

- (1) The relevant Northern Ireland department may make rules about the exercise of the function of organising the archive (including the performance of the duties of the Deputy Keeper in connection with the exercise of that function).
- (2) The rules may (in particular) make –
  - (a) provision about the matters of which a person must be informed before any oral history record of that person’s experiences is made by, or on behalf of, the Public Record Office for the archive;
  - (b) provision about the giving of consent by a person to any oral history record of that person’s experiences being made by, or on behalf of, the Public Record Office for the archive;
  - (c) provision about the receipt of records not made by, or on behalf of, the the Public Record Office for the archive;
  - (d) provision corresponding to any provision that may be made in rules under section 9 of the Public Records Act (Northern Ireland) 1923.
- (3) The rules may not confer power to give directions to the Deputy Keeper or any other employee of the Public Record Office.
- (4) Before making rules under this section, the relevant Northern Ireland department must consult the steering group appointed under section 52(9)(a).

## **57 Immunity from suit for defamation**

- (1) No action in defamation lies against –
  - (a) the Public Record Office (or any Northern Ireland department),
  - (b) the Deputy Keeper,
  - (c) any other person employed in the Public Record Office, or
  - (d) an agent of, or person carrying out work for or giving advice to, the Public Record Office,in respect of any act or omission which relates to the oral history archive.
- (2) An act or omission relates to the oral history archive if the act is done, or the omission is made –
  - (a) in, or in connection with, the exercise of the function of organising the oral history archive, or
  - (b) in good faith in, or in connection with, the purported exercise of that function.
- (3) In any particular case the Deputy Keeper may waive (in whole or to any extent) the immunity conferred by this section on any person.

## **58 Interpretation of Part 4**

- (1) Expressions used in this Part and in the Public Records Act (Northern Ireland) 1923 have the same meanings in this Act as in the 1923 Act, but subject to any modifications set out in this Part.

- (2) In this Part, each expression set out in an entry in the first column of the following table is to be read in accordance with the corresponding entry in the second column –

<i>Expression</i>	<i>Interpretation</i>
archive	The oral history archive referred to in section 51(1) to (3).
Deputy Keeper	The Deputy Keeper of Records of Northern Ireland.
function of organising (in relation to the archive)	This is to be read in accordance with section 51(8).
oral history record	This is to be read in accordance with section 51(2).
other relevant record	This has the meaning given in section 51(7).
Public Record Office	The Public Record Office of Northern Ireland.
record	This is to be read in accordance with section 51(3).
relevant Northern Ireland department	The Northern Ireland department with responsibility for the Public Record Office.

## PART 5

### THE IMPLEMENTATION AND RECONCILIATION GROUP

#### 59 The Implementation and Reconciliation Group

- (1) The Implementation and Reconciliation Group is established.
- (2) In this Part, the Implementation and Reconciliation Group is referred to as the “IRG”.
- (3) The IRG is a body corporate.
- (4) The First Minister and deputy First Minister acting jointly must provide the IRG with such moneys, premises, facilities and services as it considers appropriate.
- (5) Schedule 17 (the Implementation and Reconciliation Group) has effect.

#### 60 Functions of the IRG

- (1) The IRG must take such steps as it considers appropriate to promote reconciliation of the differences related to the constitutional status of Northern Ireland or to political or sectarian hostility between persons there.
- (2) The steps which the IRG may take include supporting and encouraging other persons in the promotion of reconciliation of those kinds of differences.
- (3) The IRG must take such steps as it considers appropriate to review and assess the implementation of paragraphs 21 to 55 of the Stormont House Agreement,



other than their implementation by Acts of Parliament and international agreements.

- (4) In exercising its functions, the IRG must act in a manner that is consistent with the general principles.
- (5) The IRG must produce an annual report on any steps it has taken under subsection (1) and subsection (3) and provide copies of each annual report to—
  - (a) the First Minister and deputy First Minister,
  - (b) the Secretary of State, and
  - (c) the Government of Ireland;and the copies of each annual report must be given to all those recipients at the same time.
- (6) The person chairing the IRG must ensure that any report produced under subsection (5) does not contain any information which—
  - (a) might put at risk the life or safety of any person, or
  - (b) would contravene the Data Protection Act 1998,if it were to be published.
- (7) The members of the IRG must have regard to the need for them to work collaboratively and in such a way as to secure public confidence in the IRG.

## **61 Reports to the IRG**

- (1) This section applies to the following reports—
  - (a) a report or interim report provided to the IRG by the Historical Investigations Unit in accordance with paragraph 6(1) or (2) of Schedule 16;
  - (b) a report or interim report provided to the IRG by the Independent Commission on Information Retrieval in accordance with section 42(3) or (4);
  - (c) a report or interim report provided to the IRG by the Deputy Keeper in accordance with section 54(1) or (2);
  - (d) the report provided to the IRG by the President of the Coroners' Courts of Northern Ireland in accordance with subsection (7);
  - (e) a report provided to the IRG by any research project established as part of the oral history archive (see paragraph 25 of the Stormont House Agreement).
- (2) The person chairing the IRG must receive each relevant report in confidence.
- (3) The person chairing the IRG must share each relevant report with all the other members of the IRG.
- (4) That duty to share a relevant report arises at the time when the four principal reports have been provided to the IRG (or, if the relevant report is received after that time, when the report is received).
- (5) But if the person chairing the IRG thinks that it is appropriate to do so, he or she may share a relevant report with all the other members of the IRG before the time when the duty to share it arises.
- (6) If a relevant report has been shared with a member of the IRG, he or she must not disclose any of the contents of the relevant report unless—
  - (a) he or she has obtained the permission of the person chairing the IRG, or

- (b) the academic report commissioned in accordance with section 62 has been produced.
- (7) The President of the Coroners' Courts of Northern Ireland must provide the IRG with a report on inquests held in relation to deaths that are within the remit of the Independent Commission on Information Retrieval (within the meaning of Part 3 – see section 50(2)).
- (8) That report –
  - (a) must be provided to the IRG on the last day of the period of 5 years beginning with the day on which this section comes into force (or, if that day is not a working day, on the last working day before it);
  - (b) may report on inquests held before the day on which this section comes into force.
- (9) Any report provided to the IRG by –
  - (a) the President of the Coroners' Courts of Northern Ireland, or
  - (b) any research project established as part of the oral history archive,must be given only to the person chairing the IRG.
- (10) In this section –
  - “relevant report” means any report to which this section applies;
  - “four principal reports” means –
    - (a) a report provided to the IRG by the Historical Investigations Unit in accordance with paragraph 6(1) of Schedule 16,
    - (b) a report provided to the IRG by the Independent Commission on Information Retrieval in accordance with section 42(3),
    - (c) a report provided to the IRG by the Deputy Keeper in accordance with section 54(1), and
    - (d) the report provided to the IRG by President of the Coroners' Courts of Northern Ireland in accordance with this section.

## 62 Independent academic report

- (1) The IRG must commission academic experts to identify, and then report to the IRG on, patterns and themes in the matters dealt with by all the reports referred to in section 61(1).
- (2) To assist in identifying and reporting on those patterns and themes –
  - (a) the academic experts may (to the extent, if any, that the academic experts think it appropriate to do so) take account of information from the sources listed in subsection (3);
  - (b) but the academic experts may not take account of such information unless it has lawfully been made available in the way referred to in subsection (3).
- (3) The sources referred to in subsection (2) are –
  - (a) family reports – and interim reports instead of family reports – produced by the Historical Investigations Unit in accordance with Part 2 that are made publicly available, or made available to the academic experts by the family concerned;
  - (b) reports produced by the Historical Investigations Unit in accordance with paragraphs 1 to 3 of Schedule 16 (annual reports and reports to the

- Policing Board, Secretary of State or Department of Justice) that are made publicly available;
- (c) family reports produced by the Police Service Historical Enquiries Team that are made publicly available, or made available to the academic experts by the family concerned;
  - (d) family reports produced by the Independent Commission on Information Retrieval in accordance with section 42(1) that are made publicly available, or made available to the academic experts by the family concerned;
  - (e) reports produced by the Ombudsman’s Historical Investigations Directorate that are made publicly available, or in the case of family reports, those that are made publicly available or made available to the academic experts by the family concerned;
  - (f) reports produced by the Independent Commission on Information Retrieval in accordance with section 42(7) (annual reports) that are made publicly available;
  - (g) the records in the oral history archive that are made publicly available by the Public Records Office in accordance with Part 4;
  - (h) reports produced by the Deputy Keeper in accordance with section 53 (annual reports relating to the oral history archive) that are made publicly available;
  - (i) decisions of criminal courts in the United Kingdom and Ireland that are made publicly available;
  - (j) judgments of civil courts and tribunals in the United Kingdom and Ireland that are made publicly available;
  - (k) conclusions reached, and findings made, in –
    - (i) proceedings before Coroners in the United Kingdom and Ireland, and
    - (ii) inquiries under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015,that are made publicly available.
- (4) In identifying and reporting on the patterns and themes, the academic experts must act –
- (a) independently of any other persons,
  - (b) free from political influence, and
  - (c) in such a way as to secure public confidence in their reports.
- (5) The duty under this section to commission an academic report arises at the time when the four principal reports have been provided to the IRG.
- (6) The IRG must give copies of any academic report that is produced to –
- (a) the First Minister and deputy First Minister,
  - (b) the Secretary of State, and
  - (c) the Government of Ireland,
- and the copies of the report must be given to all those recipients at the same time.
- (7) The person chairing the IRG must ensure that the copy of the academic report does not contain any information which –
- (a) might put at risk the life or safety of any person, or
  - (b) would contravene the Data Protection Act 1998,
- if it were published.

- (8) The First Minister and deputy First Minister acting jointly must –
  - (a) lay the copy of the academic report given to them under subsection (6) before the Northern Ireland Assembly, and
  - (b) publish that copy of the report in the manner which the First Minister and deputy First Minister acting jointly consider appropriate.
- (9) In this section –
  - “academic expert” means a person who, in the view of the IRG, is of proven academic standing;
  - “academic report” means a report commissioned under this section;
  - “Ombudsman’s Historical Investigations Directorate” and “Police Service Historical Enquiries Team” have the same meanings as in Part 2;
  - “oral history archive”, “Public Records Office” and “records” have the same meanings as in Part 4;
  - “four principal reports” has the same meaning as in section 61.

### **63 Conclusion of the IRG’s work**

- (1) The First Minister and the deputy First Minister acting jointly or the Secretary of State may, by regulations, make provision for winding up the IRG.
- (2) If provision is made under subsection (1) (whether by the First Minister and the deputy First Minister or Secretary of State), the First Minister and the deputy First Minister acting jointly or the Secretary of State may, by regulations, repeal any of the provisions of this Part (other than this section)
- (3) Before making regulations under this section, the First Minister and the deputy First Minister must consult –
  - (a) the Secretary of State,
  - (b) the Government of Ireland, and
  - (c) any other person the First Minister and deputy First Minister consider appropriate.
- (4) Before making regulations under this section, the Secretary of State must consult –
  - (a) the First Minister and deputy First Minister,
  - (b) the Government of Ireland, and
  - (c) any other person the Secretary of State considers appropriate.
- (5) The Secretary of State may not make transferred provision in regulations under this section without the consent of the Northern Ireland Assembly.
- (6) Regulations made by the First Minister and deputy First Minister under this section may only make –
  - (a) transferred provision, or
  - (b) reserved provision.
- (7) But the First Minister and deputy First Minister may not make reserved provision without the consent of the Secretary of State.

## PART 6

### PRISONER RELEASE

#### **64 Prisoner release under the Northern Ireland (Sentences) Act 1998**

Schedule 18 (prisoner release) has effect.

## PART 7

### FINAL PROVISIONS

#### **65 Consequential and transitional provision etc**

- (1) Schedule 19 (amendments) has effect.
- (2) The Secretary of State may by regulations make—
  - (a) such incidental, supplementary or consequential provision as the Secretary of State considers appropriate in consequence of this Act;
  - (b) such transitional or transitory provision or savings as the Secretary of State considers appropriate in connection with the coming into force of this Act.
- (3) The Secretary of State may not make transferred provision in regulations under subsection (2) without the consent of the Northern Ireland Assembly.
- (4) The Department of Justice may by regulations make—
  - (a) such incidental, supplementary or consequential provision as the Department considers appropriate in consequence of Part 2 of this Act;
  - (b) such transitional or transitory provision or savings as the Department considers appropriate in connection with the coming into force of Part 2 of this Act.
- (5) The relevant Northern Ireland department may by regulations make—
  - (a) such incidental, supplementary or consequential provision as the Department considers appropriate in consequence of Part 4 of this Act;
  - (b) such transitional or transitory provision or savings as the Department considers appropriate in connection with the coming into force of Part 4 of this Act.
- (6) The Executive Office may by regulations make—
  - (a) such incidental, supplementary or consequential provision as the Department considers appropriate in consequence of Part 5 of this Act;
  - (b) such transitional or transitory provision or savings as the Department considers appropriate in connection with the coming into force of Part 5 of this Act.
- (7) Regulations made by a Northern Ireland department under subsection (4), (5) or (6) may only make—
  - (a) transferred provision, or
  - (b) reserved provision.
- (8) But a Northern Ireland department may not make reserved provision without the consent of the Secretary of State.
- (9) Regulations—

- (a) under subsection (2)(a) may, in particular, amend, repeal or revoke any enactment;
  - (b) subsection (4)(a), (5)(a) or (6)(a) may, in particular, amend, repeal or revoke any enactment having effect in Northern Ireland.
- (10) In this section “relevant Northern Ireland department” has the same meaning as in Part 4 (see section 58(2)).
- (11) Any time which a person serves as Director during the HIU preparatory period does not count as part of the five year period of the first appointment of a Director (under paragraph 4(1) of Schedule 2).
- (12) The “HIU preparatory period” is the period of eight months beginning with the date when section 2(1) first comes into force (to any extent or for any purpose).
- (13) But the Secretary of State must, by transitional provision, extend the HIU preparatory period if the Secretary of State considers that it is appropriate to do so, having regard to the period of time necessary for the HIU to become fully operational.
- (14) The transitional provision may be made at any time before the end of the HIU preparatory period (whether, at that time, the end of the period is determined under subsection (12) or under transitional provision already made).
- (15) In subsections (13) and (14) “transitional provision” means provision made by regulations under –
- (a) subsection (2)(b), or
  - (b) section 68(3) (including provision contained in such regulations by virtue of section 68(4) or section 66(8)).

## 66 Regulations and laying of documents

- (1) Regulations made under this Act by the Secretary of State are to be made by statutory instrument.
- (2) A statutory instrument containing any of the following kinds of regulations may not be made by the Secretary of State unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament –
- (a) regulations under section 37;
  - (b) regulations under section 49;
  - (c) regulations under section 63;
  - (d) regulations under section 65 which amend or repeal an Act of Parliament.
- (3) Any other statutory instrument containing regulations made by the Secretary of State under this Act, except regulations containing only commencement provision, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In subsection (3) “commencement provision” means –
- (a) provision made under section 68;
  - (b) provision specifying a “specified day” for the purposes of any provision of this Act.
- (5) Regulations or rules made under this Act by a Northern Ireland department, or by the First Minister and deputy First Minister, are to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

- (6) The following kinds of regulations may not be made by a Northern Ireland department unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly –
- (a) regulations under section 37;
  - (b) regulations under section 63;
  - (c) regulations under section 65 which amend or repeal an Act of Parliament or amend, repeal or revoke Northern Ireland legislation.
- (7) Any other regulations, and any rules, made by a Northern Ireland department under this Act are subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954).
- (8) Regulations or rules under this Act may make –
- (a) different provision for different purposes or cases;
  - (b) incidental, supplementary or consequential provision;
  - (c) transitional or transitory provision or savings.
- (9) In the case of regulations made under –
- (a) section 37, or
  - (b) section 49,
- the incidental, supplementary or consequential provision that may be made includes provision amending, repealing or revoking an enactment and provision conferring functions on the Secretary of State, Department of Justice or any other person.
- (10) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of the following provisions (in relation to the laying of a document under that provision) as it applies in relation to the laying of a statutory document under an enactment (within the meaning of that Act) –
- (a) section 53(3) (copy of annual report on the oral history archive);
  - (b) section 55(2) (schedule of proposed disposal of records by oral history archive);
  - (c) section 62(8) (academic report for IRG);
  - (d) paragraph 2(4) of Schedule 15 (copy of HIU accounts and audit report);
  - (e) in Schedule 16 –
    - (i) paragraph 1(3) (copy of HIU annual report);
    - (ii) paragraph 8(4) (abstract of information provided by HIU to Department of Justice);
  - (f) in Schedule 17, paragraph 10(4).

## 67 Interpretation

In this Act, each expression set out in an entry in the first column of the following table is to be read in accordance with the corresponding entry in the second column –

<i>Expression</i>	<i>Interpretation</i>
close family member	Each of the following is a close family member of a deceased person –

<i>Expression</i>	<i>Interpretation</i>
	<p>(a) a person who was the spouse or co-habitee of the deceased at the time of the death;</p> <p>(b) a child or step-child of the deceased;</p> <p>(c) a parent or step-parent of the deceased;</p> <p>(d) a brother or sister, or half-brother or half-sister, or step-brother or step-sister, of the deceased.</p> <p>For the purpose of deciding whether a person is a close family member of a deceased person –</p> <p>(a) a person (“C”) is the “co-habitee” of another person (“P”) at a particular time if C –</p> <p>(i) was, at that time, living in the same household as P in a relationship with P corresponding to marriage or to civil partnership, and</p> <p>(ii) had been doing so for at least two years before that time;</p> <p>(b) a “step-child” of the deceased is a child of a person who was the spouse or co-habitee of the deceased –</p> <p>(i) at the time of the death, or</p> <p>(ii) at any time in the period of two years ending with the death;</p> <p>(c) a “step-parent” of the deceased is a person who was the spouse or co-habitee of a parent of the deceased –</p> <p>(i) at the time of the death, or</p> <p>(ii) at any time in the period of two years ending with the death;</p> <p>(d) a “step-brother” or “step-sister” of the deceased is a child of a step-parent of the deceased;</p> <p>(e) the fact that a person was born after the death of the deceased does not prevent the person from being a close family member of the deceased.</p>
deputy First Minister	The deputy First Minister in Northern Ireland.
enactment	<p>This includes –</p> <p>(a) an enactment contained in, or in an instrument made under, Northern Ireland legislation,</p>



<i>Expression</i>	<i>Interpretation</i>
	<p>(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament or a Measure or Act of the National Assembly for Wales, or</p> <p>(c) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978).</p>
excepted matter	This has the meaning given by section 4(1) of the Northern Ireland Act 1998.
First Minister	The First Minister in Northern Ireland.
human rights obligations	Obligations under the Human Rights Act 1998.
reserved matter	This has the meaning given by section 4(1) of the Northern Ireland Act 1998.
reserved provision	Provision which, if it were contained in an Act of the Northern Ireland Assembly, would require the consent of the Secretary of State under section 8(b) of the Northern Ireland Act 1998.
specified day	When used in a particular provision of this Act, this means the day which the Secretary of State specifies for the purposes of that provision by regulations.
Stormont House Agreement	The agreement made between parties represented in the Northern Ireland Assembly, the Government of the United Kingdom and the Government of Ireland on 23 December 2014.
transferred matter	This has the meaning given by section 4(1) of the Northern Ireland Act 1998.
transferred provision	<p>This means provision which –</p> <p>(a) would be within the legislative competence of the Assembly if it were contained in an Act of the Northern Ireland Assembly, and</p> <p>(b) would deal with a transferred matter without being ancillary to other provision (whether in the Act or previously enacted) which deals with an excepted matter or reserved matter;</p> <p>and here –</p> <p>(i) “ancillary” has the meaning given in section 6(3) of the Northern Ireland Act 1998;</p>

<i>Expression</i>	<i>Interpretation</i>
	(ii) a reference here to provision dealing with a matter is to be read in accordance with section 98(2) of the Northern Ireland Act 1998.

## 68 Short title, commencement and extent

- (1) This Act may be cited as the Northern Ireland (Stormont House Agreement) Act 2018.
- (2) Sections 65(2) to (10), 66 and 67 and this section come into force on the day this Act is passed.
- (3) The other provisions of this Act come into force on such day as the Secretary of State may appoint by regulations.
- (4) Regulations under this section may appoint different days for different purposes.
- (5) The following provisions extend to Northern Ireland only –
  - (a) Part 4;
  - (b) paragraphs 8 and 9 of Schedule 7.
- (6) Section 64 and Schedule 18 extend to Northern Ireland, England and Wales and Scotland.
- (7) Any other amendment or repeal of any enactment has the same extent as the enactment to which it relates.
- (8) Subject to subsections (5) to (7), this Act extends to Northern Ireland, England and Wales and Scotland.

## SCHEDULES

### SCHEDULE 1

Section 2

#### POWERS AND PROCEEDINGS OF THE HIU

##### *Powers*

- 1 (1) The HIU may do anything that it thinks necessary or expedient in connection with the exercise of its functions.
- (2) In particular, the HIU may –
  - (a) enter into contracts and other agreements (whether legally binding or not), and
  - (b) acquire and dispose of property (including land).
- (3) But the HIU may not borrow money.
- (4) It is for the HIU to make payments of, or payments towards the provision of, any remuneration, pensions, allowances, gratuities or compensation payable to, or in respect of, the Director, the other members of the HIU or HIU officers.

##### *Regulation of proceedings*

- 2 (1) The HIU may regulate its own proceedings (including quorum).
- (2) In this paragraph “standing order” means a procedure for regulating the proceedings of the HIU (including quorum).
- (3) The HIU’s power to regulate its proceedings is subject to the following restrictions –
  - (a) all five members which the HIU has under section 3(1) must be present at the meeting at which the HIU first decides its standing orders;
  - (b) the Director must be among the members of the HIU present at any other meeting at which the HIU decides any standing order (including a change to, or revocation of, a standing order).
- (4) The standing orders of the HIU may provide that persons who are not members of the HIU may attend meetings of the HIU.
- (5) The HIU may reimburse such a person for expenses reasonably incurred in attending a meeting of the HIU.

##### *Committees*

- 3 (1) The HIU may establish committees.

- (2) In particular, the HIU may establish—
  - (a) a committee to deal with complaints about the HIU or HIU officers,
  - (b) a committee to deal with disciplinary matters relating to HIU officers, or
  - (c) a committee to deal with such complaints and disciplinary matters.
- (3) Any committee of the HIU may establish one or more sub-committees.
- (4) A person who is not a member of the HIU—
  - (a) may be appointed as a member of a qualifying committee or sub-committee, and
  - (b) may chair a qualifying committee or sub-committee of which he or she is a member,
 if the HIU is satisfied that there is a special need for the person to do so and that the person has specialist expertise which is relevant to the work of the committee or sub-committee.
- (5) The HIU may pay remuneration and allowances to such a person in respect of the person’s membership or chairing of a committee or sub-committee.
- (6) The HIU may regulate the proceedings of its committees and sub-committees (including quorum).
- (7) In particular, the HIU may provide that persons who are not members of a committee or sub-committee may attend meetings of the committee or sub-committee.
- (8) The HIU may reimburse such a person for expenses reasonably incurred in attending a meeting of the committee or sub-committee.
- (9) In this paragraph “qualifying committee or sub-committee” means a committee or sub-committee which deals with—
  - (a) complaints about the HIU or HIU officers, or
  - (b) financial or administrative matters.

#### *Validity of proceedings*

- 4 (1) The validity of any proceedings of the HIU (including proceedings of a committee or sub-committee) is not affected by—
  - (a) any vacancy in the office of Director;
  - (b) any other vacancy in the membership of the HIU;
  - (c) any defect in the appointment of the Director or any other member of the HIU.
- (2) But that does not alter—
  - (a) the requirement under paragraph 2(3)(a) for the presence of all five members of the HIU at the meeting referred to there, or
  - (b) the requirement under paragraph 2(3)(b) for the Director’s presence at a meeting of the kind referred to there.
- (3) The validity of any proceedings of a committee or sub-committee is not affected by—
  - (a) any vacancy in the membership of a committee or sub-committee;
  - (b) any defect in the appointment of a member of a committee or sub-committee.

*Delegation of functions*

- 5 (1) The HIU may arrange for any of its functions to be exercised by –
  - (a) the Director,
  - (b) one or more of the other members of the HIU,
  - (c) an HIU officer, or
  - (d) a committee or sub-committee of the HIU.
- (2) It is for the HIU to determine the extent to which a function is exercisable in accordance with arrangements under sub-paragraph (1).
- (3) But no arrangements under sub-paragraph (1) may be made in respect of the functions of the HIU under paragraph 2 to decide standing orders.
- (4) A committee of the HIU may arrange for any function which is exercisable by the committee to be exercised by –
  - (a) an HIU officer, or
  - (b) a sub-committee of that committee.
- (5) It is for the committee to determine the extent to which a function is exercisable in accordance with such arrangements.
- (6) The power under sub-paragraph (4) for a committee to delegate a function is subject to any limit or exclusion which is imposed on that power by the arrangements under which that function is exercisable by the committee.

*Seal and proof of documents*

- 6 (1) The HIU may have a seal.
- (2) The application of the HIU's seal must be authenticated by the signatures of –
  - (a) the Director, and
  - (b) at least one other member of the HIU.
- (3) Those provisions do not prevent the HIU from acting otherwise than by a document under seal.
- (4) A document purporting to be duly executed under the seal of the HIU must be received in evidence and treated as so executed unless the contrary is shown.
- (5) A document purporting to be signed on behalf of the HIU by –
  - (a) the Director,
  - (b) any other member of the HIU, or
  - (c) any person who is authorised (generally or specially) for that purpose,must be received in evidence and treated as so signed unless the contrary is shown.

## SCHEDULE 2

Section 3

## HIU MEMBERS AND OFFICERS

## PART 1

## THE APPOINTMENTS PANEL

*The appointments panel*

- 1 (1) In this Schedule “appointments panel” means –
  - (a) the Attorney General for Northern Ireland,
  - (b) the relevant member of the Commission for Victims and Survivors for Northern Ireland,
  - (c) the person who is the head of the Northern Ireland Civil Service, and
  - (d) a person with experience of managing major criminal investigations, appointed to the panel by the Minister of Justice.
- (2) Where the Minister of Justice is required by paragraph 2 or 4 to act in accordance with the recommendation of the appointments panel when exercising a function –
  - (a) the Minister of Justice must convene the appointments panel before exercising that function;
  - (b) the appointments panel must make a recommendation (which may be a recommendation that the function should not be exercised);
  - (c) any such recommendation must be made with the agreement of all the members of the appointments panel.
- (3) When making a recommendation in relation to any appointment, the appointments panel must have regard to the provision made by any code of practice issued by the Commissioner for Public Appointments for Northern Ireland.
- (4) The appointments panel must be satisfied that a person has experience of managing major criminal investigations before recommending the person for appointment as the Director.
- (5) Where the Minister of Justice is proposing to call on a member of the HIU to resign under paragraph 5 –
  - (a) the Minister of Justice must convene the appointments panel before calling for the resignation, and
  - (b) the appointments panel must act in accordance with paragraph 5.
- (6) The “relevant member” of the Commission for Victims and Survivors for Northern Ireland is –
  - (a) if that Commission has only one member, that person;
  - (b) if that Commission has two or more members, whichever of those members is nominated by the Commission to be a member of the appointments panel on a particular occasion when it is convened.

PART 2

MEMBERS OF THE HIU

*Appointment*

- 2 (1) The Director is to be appointed by the Minister of Justice.
- (2) Of the four other members of the HIU referred to in section 3(1)(b) –
  - (a) two are to be appointed by the Minister of Justice (referred to in this Schedule as “non-executive members”);
  - (b) two are to be appointed by the Director (referred to in this Schedule as “executive members”).
- (3) The Minister of Justice must act in accordance with the recommendation of the appointments panel in appointing a person to be the Director or one of the non-executive members of the HIU.
- (4) But, in relation to a particular appointment of the Director or one of the non-executive members of the HIU –
  - (a) the Minister of Justice may require the appointments panel to reconsider its initial recommendation (and, as respects that appointment, only that initial recommendation); and
  - (b) if the Minister of Justice does so, the duty under sub-paragraph (3) to act in accordance with that recommendation does not apply unless the appointments panel confirms the recommendation after reconsidering it.
- (5) A person may not be appointed as a member of the HIU if –
  - (a) the person has been sentenced to a term of imprisonment, or given a sentence of detention, of three months or more;
  - (b) the person is insolvent; or
  - (c) the person is disqualified from being a company director.
- (6) A person’s current or previous membership of the HIU (whether as Director or one of the other members) does not prevent the person from being appointed again as a member of the HIU (whether as Director or one of the other members).
- (7) But a person who has been removed from office in accordance with paragraph 5(2) to (8) may not be appointed as the Director, or as one of the non-executive members of the HIU, unless the person was removed because of ill health.
- (8) Articles 2 and 3 of the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 are to apply to the members of the HIU as they apply to the offices and employments specified in Part 2 of Schedule 1 to that Order.

*Persons holding public elected positions not to be members of HIU*

- 3 (1) A person who holds a relevant office may not be appointed to be a member of the HIU under paragraph 2.
- (2) A person ceases to be a member of the HIU if the person begins to hold a relevant office.

- (3) A reference in this paragraph to a person who holds a relevant office is a reference to a person who is –
- (a) a member of the Northern Ireland Assembly;
  - (b) a councillor (within the meaning of the Local Government Act (Northern Ireland) 2014 – see section 126(1) of that Act);
  - (c) a Member of Parliament;
  - (d) a member of the House of Lords;
  - (e) a member of the Dáil Éireann (House of Representatives of Ireland);
  - (f) a member of the Seanad Éireann (Senate of Ireland);
  - (g) a member of a city council, county council or city and county council in Ireland;
  - (h) a member of the European Parliament (from any member State).

*Terms of appointment of Director and non-executive members*

- 4 (1) The first person appointed as the Director is to be appointed for a period of five years.
- (2) Each of the first two persons appointed as non-executive members of the HIU is to be appointed for a period of five years.
- (3) If sub-paragraph (1) or (2) does not apply to the appointment of a person as the Director, or one of the non-executive members of the HIU, the appointment is to be for a period, which must not exceed two years, determined by the Minister of Justice in accordance with the recommendation of the appointments panel.
- (4) The duration of the appointment of a person as the Director, or one of the non-executive members of the HIU, may be extended by the Minister of Justice in accordance with the recommendation of the appointments panel.
- (5) Any such extension is to be for a period, which must not exceed two years, determined by the Minister of Justice in accordance with the recommendation of the appointments panel.
- (6) The other terms of a person’s appointment as the Director, or one of the non-executive members of the HIU, are to be determined by the Minister of Justice in accordance with the recommendation of the appointments panel.
- (7) If it appears to the Department of Justice that there are special circumstances which make it right for a person to receive compensation on ceasing to be the Director, or one of the non-executive members, the Department may determine the amount of the compensation payable.

*Resignation and removal of Director and non-executive members*

- 5 (1) A person who is the Director, or one of the non-executive members of the HIU, ceases to be a member of the HIU if the person gives the Minister of Justice written notice of resignation.
- (2) The Minister of Justice may call on a person who is the Director, or one of the non-executive members of the HIU, to resign –
- (a) in the interests of efficiency and effectiveness;
  - (b) if the integrity of the HIU has been, or is likely to be, undermined because the member of the HIU has acted improperly;



- (c) if the member of the HIU is convicted of any offence involving dishonesty or deception;
  - (d) if the member of the HIU is convicted of any other offence and sentenced to a term of imprisonment;
  - (e) if the member of the HIU is insolvent; or
  - (f) if the member of the HIU is disqualified from being a company director.
- (3) If the Minister of Justice proposes to call on a member of the HIU to resign, the appointments panel must—
- (a) hold an inquiry into the proposal to call for the member’s resignation,
  - (b) recommend that the member either should, or should not, be called on to resign, and
  - (c) produce a report on the outcome of its inquiry (which must include their recommendation).
- (4) A recommendation that a member of the HIU should be called on to resign must be made with the agreement of all the members of the appointments panel.
- (5) Before the appointments panel begins its inquiry, the Minister of Justice must—
- (a) give the member of the HIU a written explanation of the reasons why it is proposed to call for his or her resignation, and
  - (b) allow the member of the HIU the opportunity to make written representations about the proposal to call for the resignation.
- (6) A copy of any report under sub-paragraph (3)(c) must be made available to the member of the HIU.
- (7) The Minister of Justice may not call on a member of the HIU to resign unless the appointments panel recommends that the person should do so.
- (8) If the Minister of Justice calls on a member of the HIU to resign, the person must resign—
- (a) on the date specified by the Minister of Justice, or
  - (b) on any earlier date which the person agrees with the Minister of Justice.

*Terms of appointment, resignation and removal of executive members*

- 6 (1) This paragraph applies to a person appointed by the Director as an executive member of the HIU.
- (2) The HIU must—
- (a) employ the person as an HIU officer under section 3(3), and
  - (b) secure that that employment as an HIU officer takes effect at the same time as the person’s appointment as an executive member takes effect;
- unless the person is already employed as an HIU officer.
- (3) The Director is to determine what terms (if any) are to apply to the person’s appointment as an executive member (in addition to the person’s terms of service as an HIU officer).

- (4) Such terms may provide for the payment of remuneration, pension, allowance or gratuity in respect of the person's appointment as an executive member only if—
- (a) the Director is satisfied that it is appropriate for those payments to be made in addition to any payments in respect of the person's service as an HIU officer, and
  - (b) the Department of Justice agrees to the terms.
- (5) The person ceases to be an executive member if—
- (a) the person ceases to be an HIU officer;
  - (b) the person gives the Director notice of resignation as an executive member; or
  - (c) the Director removes the person from membership of the HIU.
- (6) The person's status as an HIU officer is not affected by the person's resignation or removal under sub-paragraph (5)(b) or (c).

#### *Functions*

- 7 (1) Any functions conferred on the Director are to be treated as functions of the HIU exercisable by the Director acting on behalf of, and in the name of, the HIU.
- (2) The Director may authorise—
- (a) any other member of the HIU, or
  - (b) any HIU officer,
- to do any act which the Director may do.
- (3) But no authorisation under sub-paragraph (2) may be given in relation to any function of the Director under section 6(3), 11 or 23.
- (4) An authorisation under sub-paragraph (2) may be given generally or specially.
- (5) A function conferred on the Director is to be exercisable by the HIU if—
- (a) there is a vacancy in the office of Director, or
  - (b) the Director is unable to exercise the function.
- (6) If a function is exercisable by the HIU in accordance with sub-paragraph (5), the HIU may make arrangements under paragraph 5 of Schedule 1 relating to the exercise of the function.

#### *Conflicts of interest*

- 8 (1) The Minister of Justice may require—
- (a) the Director,
  - (b) a non-executive member of the HIU, or
  - (c) a person who is being considered for appointment as the Director or as a non-executive member of the HIU,
- to provide the Minister of Justice with information about any relevant matter.
- (2) Where such information is provided by a person who is being considered for appointment as the Director or as a non-executive member of the HIU, the

Minister of Justice must give that information to the appointments panel convened in relation to the appointment of that member of the HIU.

- (3) The Director may require a person who is being considered for appointment as an executive member of the HIU to provide the Director with information about any relevant matter.
- (4) In this paragraph “relevant matter”, in relation a member of the HIU or a person being considered for appointment, means any matter which might reasonably be expected to –
  - (a) give rise to a conflict of interest, or
  - (b) otherwise affect the person’s ability to carry out his or her duties fairly and impartially.

### PART 3

#### HIU OFFICERS

##### *Employed HIU officers*

- 9 (1) This paragraph applies to employment of persons as Historical Investigations Unit officers under section 3(3).
- (2) The HIU is to determine –
  - (a) the number of persons employed; and
  - (b) the terms of their employment.
- (3) The HIU must obtain the agreement of the Department of Justice to –
  - (a) the number of persons employed, and
  - (b) the terms of their employment which relate to remuneration, pensions, allowances, gratuities or compensation.

##### *Seconded HIU officers*

- 10 (1) This paragraph applies to the secondment of persons to be Historical Investigations Unit officers under section 3(4).
- (2) The HIU must obtain the agreement of the Department of Justice to –
  - (a) the number of persons seconded, and
  - (b) the terms of their secondment which relate to remuneration, pensions, allowances, gratuities or compensation.
- (3) Persons seconded are under the direction and control of the Director in the same way as persons employed under section 3(3).
- (4) In the case of the secondment of a member of a police force –
  - (a) arrangements for the secondment are to be made with the chief officer of that police force; and
  - (b) the arrangements must provide for the HIU to pay the policing body responsible for that police force the amount that is specified in, or determined in accordance with, the arrangements.
- (5) If a person seconded to the HIU is a constable in any police force, the powers and privileges which that person has by virtue of being a constable are not exercisable in Northern Ireland –
  - (a) from the time when the person becomes an HIU officer;

- (b) but are revived if the person –
  - (i) ceases to be an HIU officer, and
  - (ii) returns to service as a constable.
- (6) Sub-paragraph (5) ceases to apply to a person who resigns from, or otherwise ceases to hold, the office of constable.
- (7) Service on a secondment is relevant service for the purposes of –
  - (a) section 27 of the Police (Northern Ireland) Act 1998 (members of the Police Service engaged on other police service), if the person seconded is a member of the Police Service; and
  - (b) section 97 of the Police Act 1996 (police officers engaged on service outside their force), if the person seconded is a member of a police force as defined in section 101 of that Act).
- (8) If a member of the Police Service is on secondment to the HIU, the application of section 35 of the Police (Northern Ireland) Act 1998 to the person does not affect his or her ability as an HIU officer to be a member of any trade union or association.
- (9) In this paragraph –
  - “police force” means –
    - (a) the Police Service, or
    - (b) a police force in Great Britain;
  - “policing body responsible for” a police force means –
    - (a) in the case of the Police Service, the Policing Board;
    - (b) in the case of a police force maintained under section 2 of the Police Act 1996, the Police and Crime Commissioner for the police area for which that force is maintained;
    - (c) in the case of the metropolitan police force, the Mayor’s Office for Policing and Crime;
    - (d) in the case of the City of London police force, the Common Council of the City of London as police authority for the City of London police area;
    - (e) in the case of the Police Service of Scotland, the Scottish Police Authority;
    - (f) in the case of the Ministry of Defence Police, the Secretary of State;
    - (g) in the case of the British Transport Police, the British Transport Police Authority.

*Persons holding public elected positions not to be HIU officers*

- 11 (1) A person who holds a relevant office may not become an HIU officer.
- (2) A person ceases to be an HIU officer if the person begins to hold a relevant office.
- (3) A reference in this paragraph to a person who holds a relevant office has the same meaning as in paragraph 3.

*Rehabilitation of offenders*

- 12 Articles 2 and 3 of the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 are to apply to HIU officers as they apply to the offices and employments specified in Part 2 of Schedule 1 to that Order.

*Liability of the HIU and HIU officers*

- 13 (1) The HIU may, in such cases and to such extent as appear to it to be appropriate, pay –
- (a) any damages or costs awarded against an HIU officer in proceedings for any unlawful conduct of that HIU officer;
  - (b) any costs, or in Scotland expenses, incurred and not recovered by an HIU officer in such proceedings; and
  - (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings, if the settlement is approved by the Policing Board.
- (2) The HIU may make arrangements for the legal representation of any HIU officer in any proceedings mentioned in sub-paragraph (1).
- (3) The Employers' Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972 does not require insurance to be effected by the HIU.
- (4) The HIU is liable for the unlawful conduct of a person which occurs when the person is carrying out, or purporting to carry out, functions whilst seconded to the HIU under paragraph 10 in the same manner as an employer is liable in respect of unlawful conduct of employees in the course of their employment.
- (5) If the unlawful conduct is a tort, the HIU is accordingly to be treated as a joint tortfeasor.
- (6) Where an international joint investigation team has been formed under the leadership of the Director or another HIU officer –
- (a) the HIU is liable for the unlawful conduct of a person (if not an HIU officer) which occurs when the person is carrying out, or purporting to carry out, functions as a member of that team in the same manner as an employer is liable in respect of unlawful conduct of employees in the course of their employment; and
  - (b) sub-paragraphs (1) and (2) apply in relation to every member of that team (if not an HIU officer) in the same way that they apply in relation to HIU officers.
- (7) In this paragraph “international joint investigation team” means any investigation team formed in accordance with –
- (a) any measure on joint investigation teams adopted under Article 34 of the Treaty on European Union (as it had effect before 1 December 2009) or under Chapter 4 or 5 of Title V of the Treaty on the Functioning of the European Union;
  - (b) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000, and the Protocol to that Convention; or
  - (c) any international agreement to which the United Kingdom is a party and which is specified in an order made by the Department of Justice

for the purposes of section 29(7)(c) of the Police (Northern Ireland) Act 1998.

*No limitation on trade union activity*

- 14 An HIU officer is not to be regarded as in police service for the purposes of –
- (a) Article 145 of the Trade Union and Labour Relations (Northern Ireland) Order 1995;
  - (b) Article 243 of the Employment Rights (Northern Ireland) Order 1996;
  - (c) section 280 of the Trade Union and Labour Relations (Consolidation) Act 1992; or
  - (d) section 200 of the Employment Rights Act 1996.

*Provisions that do not apply to the Director as an HIU officer*

- 15 The following provisions do not apply to the Director in his or her capacity as an HIU officer –
- (a) section 3(5);
  - (b) paragraphs 7(2)(b) and 12 of this Schedule;
  - (c) paragraph 7(3) of Schedule 12.

PART 4

INSOLVENCY AND DISQUALIFICATION FROM BEING COMPANY DIRECTOR

*Insolvency*

- 16 For the purposes of this Schedule a person is “insolvent” if –
- (a) the person has become bankrupt or is an undischarged bankrupt;
  - (b) the person has become the subject of a bankruptcy restrictions order;
  - (c) a debt relief order or a debt relief restrictions order has been made in respect of the person;
  - (d) the person has made a composition or arrangement with his or her creditors, or granted a trust deed for, his or her creditors;
  - (e) under the law of Scotland, the person’s estate has been sequestrated and the person has not been discharged.

*Disqualification from being company director*

- 17 For the purposes of this Schedule a person is “disqualified from being a company director” if the person is subject to –
- (a) a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002,
  - (b) any order, undertaking or other provision under the law of England and Wales or Scotland that has a corresponding effect,
  - (c) an order under Article 86(1) of the Judgments Enforcement (Northern Ireland) Order 1981, or
  - (d) any order, undertaking or other provision under the law of England and Wales or Scotland that has a corresponding effect.

SCHEDULE 3

Section 5

DEATHS WITHIN THE HIU’S REMIT

*Deaths that are part of the caseload of the Historical Enquiries Team*

- 1 A death is part of the caseload of the Police Service Historical Enquiries Team if the Chief Constable has certified that the Team had identified the death as being within its remit before the relevant date.

*Deaths that are part of the caseload of the Historical Investigations Directorate*

- 2 A death is part of the caseload of the Ombudsman’s Historical Investigations Directorate if the Ombudsman has certified that—
  - (a) before the relevant date—
    - (i) a complaint about the death was made to the Ombudsman and was (by virtue of section 52(8) of the Police (Northern Ireland) Act 1998) required to be dealt with in accordance with Part 7 of that Act,
    - (ii) a matter concerning the death was referred to the Ombudsman and was (by virtue of section 55(3) or (5) of the Police (Northern Ireland) Act 1998) required to be formally investigated in accordance with section 56 of that Act, or
    - (iii) the Ombudsman, of his or her own motion, has formally investigated a matter relating to the death, and
  - (b) the complaint, referral or investigation was within the remit of the Ombudsman’s Historical Investigations Directorate.

*Deaths that require further investigation*

- 3 (1) A death that is—
  - (a) part of the caseload of the Police Service Historical Enquiries Team, or
  - (b) part of the caseload of the Ombudsman’s Historical Investigations Directorate,requires further investigation by the HIU if any of the following conditions is met.
  - (2) *Condition A*: the certifying officer has certified that the investigatory process relating to the death had not begun by the relevant date.
  - (3) *Condition B*: the certifying officer has certified that the investigatory process in relation to the death—
    - (a) had begun before the relevant date, but
    - (b) had not been completed by that date.
  - (4) *Condition C*:—
    - (a) the certifying officer has certified that the investigatory process in relation to the death had been completed by the relevant date, and
    - (b) any ground set out in paragraph 6 (which relates to new evidence), or 7 (which relates to conduct by a person in respect of a death), applies to the death.
  - (5) *Condition D*:—

- (a) the Director of Public Prosecutions for Northern Ireland refers the death to the HIU under paragraph 1 of Schedule 6, and
  - (b) the death is not otherwise within the HIU’s remit.
- (6) In this paragraph –
- “certifying officer” means –
    - (a) the Chief Constable, in relation to the Police Service Historical Enquiries Team;
    - (b) the Ombudsman, in relation to the Ombudsman’s Historical Investigations Directorate;
  - “investigatory process” means –
    - (a) the Police Service investigatory process, in relation to the Police Service Historical Enquiries Team;
    - (b) a HID investigation, in relation to the Ombudsman’s Historical Investigations Directorate.

*Caseload of Historical Enquiries Team: certification by the Chief Constable*

- 4 (1) The Chief Constable must –
- (a) produce and certify the required summary of the Police Service investigatory process, and
  - (b) give that certified summary to the HIU.
- (2) The Chief Constable must comply with those duties within the period of 14 days beginning with the specified day.
- (3) The “required summary of the Police Service investigatory process” is –
- (a) a statement of the name of each person whose death the Police Service Historical Enquiries Team had identified as being within its remit before 23 December 2014;
  - (b) for each of those deaths, a statement of whether –
    - (i) the Police Service investigatory process had not been completed by 23 December 2014 (whether or not it had been begun), or
    - (ii) the Police Service investigatory process had been completed by that date;
  - (c) for each death for which the Police Service investigatory process had been completed by 23 December 2014, a statement of whether any ground set out in paragraph 7 applies to the death.
- (4) If a relative of a deceased person satisfies the Chief Constable that the Police Service investigatory process relating to the person’s death had not been completed by 23 December 2014 for the reasons set out in sub-paragraph (5), the Chief Constable must –
- (a) amend the required summary of the Police Service investigatory process so far as necessary,
  - (b) certify the required summary as amended, and
  - (c) within the period of 7 days beginning with the day of its amendment give that certified summary to the HIU.
- (5) The reasons referred to in sub-paragraph (4) are that –
- (a) one or more relatives of the deceased person have communicated (in writing) with the Police Service about the outcome of the Police Service investigatory process,



- (b) the Police Service have responded to that communication (in writing) indicating that the Police Service investigatory process is to be reconsidered or reopened in any respect, and
  - (c) neither of the following has been given to any relative of the family of the deceased by the Police Service –
    - (i) a revised or new report on the outcome of the Police Service investigatory process;
    - (ii) confirmation that the previous report is to stand.
- (6) The duty imposed by this paragraph to certify the required summary, or that summary as amended, may only be performed by the Chief Constable (or a person exercising the functions of the Chief Constable in accordance with section 34 of the Police (Northern Ireland) Act 2000).

*Caseload of the Historical Investigations Directorate: certification by the Ombudsman*

- 5 (1) The Ombudsman must –
- (a) produce and certify the required summary of the past work of the Ombudsman's Historical Investigations Directorate, and
  - (b) give that certified summary to the HIU.
- (2) The Ombudsman must comply with those duties within the period of 14 days beginning with the specified day.
- (3) The “required summary of the past work of the Ombudsman's Historical Investigations Directorate” is –
- (a) a statement of the following names –
    - (i) for each complaint about a death that was made to the Ombudsman before the specified day and was within the remit of the Ombudsman's Historical Investigations Directorate, the name of the deceased;
    - (ii) for each matter concerning a death that was referred to the Ombudsman before the specified day and was within the remit of the Ombudsman's Historical Investigations Directorate, the name of the deceased;
    - (iii) for each matter relating to a death that was subject to formal investigation by the Ombudsman of his or her own motion before the specified day and was within the remit of the Ombudsman's Historical Investigations Directorate, the name of the deceased;
  - (b) for each of those deaths, a statement of whether –
    - (i) an HID investigation had not been completed by the specified day (whether or not it had been begun), or
    - (ii) an HID investigation had been completed by the specified day.
- (4) The Ombudsman may authorise any officer of the Ombudsman to perform any function under this paragraph.

*Grounds for further investigation of complete cases: new evidence*

- 6 (1) These are the grounds relating to new evidence referred to in paragraph 3(4)(b).
- (2) The grounds can apply to a death whether it is certified –

- 
- (a) as part of the caseload of the Police Service Historical Enquiries Team, or
  - (b) as part of the caseload of the Ombudsman's Historical Investigations Directorate.
- (3) *Ground A:* –
- (a) there is new evidence relating to the death, and
  - (b) the Director has reasonable grounds for believing that the new evidence is capable of leading to –
    - (i) the identification of a person involved in the death, or
    - (ii) the prosecution of a person for a criminal offence relating to the death.
- Ground A does not apply if ground B applies.
- (4) *Ground B:* –
- (a) there is new evidence relating to the death which the Director considers to be evidence of non-criminal police misconduct,
  - (b) the Director has reasonable grounds for believing that the new evidence is capable of leading to –
    - (i) the identification of a person involved in the death, or
    - (ii) the initiation of disciplinary proceedings against a person for the misconduct relating to the death, and
  - (c) the Director considers that it is appropriate to investigate the misconduct because of –
    - (i) the gravity of the misconduct, or
    - (ii) exceptional circumstances.
- (5) Evidence relating to a death is “new evidence” if –
- (a) the individuals carrying out the investigatory process for the investigatory authority in relation to the death –
    - (i) did not know of the evidence, or
    - (ii) did not know of the relationship between the evidence and the death; or
  - (b) the HIU –
    - (i) did not previously know of the evidence, or
    - (ii) did not previously know of the relationship between the evidence and the death.
- (6) A person is “involved in” a death if –
- (a) the person committed a criminal offence relating to the death, or
  - (b) the person's conduct constitutes non-criminal police misconduct relating to the death.
- (7) When the Director is forming the belief about whether new evidence is capable of leading to the identification of a person, the prosecution of a person or the initiation of disciplinary proceedings against a person, the Director must –
- (a) take account of the credibility of the new evidence, and
  - (b) take the new evidence into account with all other relevant matters.
- (8) The following matters (in particular) do not prevent the Director from forming a belief that new evidence is capable of leading to the identification

of a person, the prosecution of a person or the initiation of disciplinary proceedings against a person –

- (a) that person’s physical or mental health at any time;
- (b) that person’s absence from the jurisdiction at any time;
- (c) the death of that person since the time when the criminal offence or non-criminal police misconduct occurred;
- (d) the death of any other person since that time;
- (e) the period that has elapsed since that time.

(9) The HIU –

- (a) must establish a procedure under which a relative of a deceased person may bring new evidence to the attention of the HIU for the purposes of this paragraph;
- (b) may modify or replace the procedure;
- (c) must publish, in the manner which the HIU considers appropriate, the procedure that is currently established.

(10) In this paragraph –

“investigatory authority” means –

- (a) the Police Service, in relation to a completed Police Service investigatory process;
- (b) the Ombudsman, in relation to a completed HID investigation;

“relevant investigatory process” means –

- (a) the completed Police Service investigatory process that has been certified by the Chief Constable as mentioned in paragraph 4(3)(b)(ii), or
- (b) the completed HID investigation that has been certified by the Ombudsman as mentioned in paragraph 5(3)(b)(ii).

*Grounds for further investigation of complete cases: conduct in respect of a death*

- 7
- (1) These are the grounds relating to conduct by a person (P) in respect of a death referred to in paragraph 3(4)(b).
  - (2) The grounds can apply to a death only if it is certified as part of the caseload of the Police Service Historical Enquiries Team.
  - (3) *Ground C*: the Chief Constable –
    - (a) has reasonable grounds for believing that the death was the direct result of the use of force by P, and
    - (b) is satisfied that that conduct by P requires further investigation.
  - (4) *Ground D*: –
    - (a) the Chief Constable has reasonable grounds for suspecting that P –
      - (i) facilitated an offence or avoidance of justice relating to the death, and
      - (ii) did so with the intention of achieving an unlawful or improper purpose, and
    - (b) either –
      - (i) the Chief Constable has reasonable grounds for suspecting that, by doing so, P committed a criminal offence, or

- (ii) the Chief Constable considers that the HIU should investigate the death because of the gravity of P’s conduct or because there are exceptional circumstances, and
  - (c) the Chief Constable is satisfied that the conduct by P mentioned in paragraph (a)(i) or (ii) requires further investigation.
- (5) In deciding whether conduct by P in respect of a death requires further investigation, the Chief Constable must have particular regard to the report of the inspectors of constabulary entitled “Inspection of the Police Service of Northern Ireland Historical Enquiries Team” which was published on 3 July 2013.
- (6) For the purposes of ground D, P facilitated an offence or avoidance of justice relating to the death if P –
- (a) assisted or caused, or intended to assist or cause, a person to commit a criminal offence relating to the death, or
  - (b) assisted, or intended to assist, a person to avoid arrest or prosecution in any jurisdiction for any criminal offence relating to the death.
- (7) Ground C or D does not apply in a case where –
- (a) the death is certified as part of the caseload of the Ombudsman’s Historical Investigations Directorate (as well as part of the caseload of the Police Service Historical Enquiries Team),
  - (b) the use of force, or facilitation of the offence or avoidance of justice, by P was investigated under Part 7 of the Police (Northern Ireland) Act 1998, and
  - (c) the HID investigatory process relating to the death has been certified as completed by the relevant date.

### Interpretation

- 8 In this Schedule, each expression set out in an entry in the first column of the following table is to be read in accordance with the corresponding entry in the second column –

<i>Expression</i>	<i>Interpretation</i>
certified	This means – (a) certified in the required summary given by the Chief Constable to the HIU in accordance with paragraph 4, in relation to the Police Service Historical Enquiries Team; (b) certified in the required summary given by the Ombudsman to the HIU in accordance with paragraph 5, in relation to the Ombudsman’s Historical Investigations Directorate.

<i>Expression</i>	<i>Interpretation</i>
HID investigation (in relation to a death)	Consideration by the Ombudsman’s Historical Investigations Department of – (a) a complaint about the death made to the Ombudsman, (b) a matter relating to the death referred to the Ombudsman, or (c) a matter formally investigated by the Ombudsman of his or her own motion.
when an HID investigation is “completed”	This is when – (a) there are no further steps which the Ombudsman is required by Part 7 of the Police (Northern Ireland) Act 1998 to take in relation to the death, and (b) the Ombudsman has either – (i) published a statement about the investigation, or (ii) decided that it is appropriate not to publish a statement about the investigation.
Police Service investigatory process (in relation to a death)	This means – (a) a review of the death by the Police Service Historical Enquiries Team, and (b) any other aspects of the criminal investigation of the death carried out by the Police Service or by the Royal Ulster Constabulary.
when the Police Service investigatory process is “begun”	When the Police Service Historical Enquiries Team has begun to review the death.
when the Police Service investigatory process is “completed”	When the Police Service Historical Enquiries Team has given at least one relative of the deceased a report on the outcome of the Police Service investigatory process.
relevant date	This means – (a) 23 December 2014, in relation to the Police Service Historical Enquiries Team; (b) the specified day, in relation to the Ombudsman’s Historical Investigations Directorate.

## SCHEDULE 4

Section 6

## CONTINUING POLICE SERVICE OR OMBUDSMAN INVESTIGATION: TRANSITIONAL PROVISION

*Deaths which the Police Service are to continue to investigate*

- 1 (1) This paragraph applies to a death if—
  - (a) the death is within the HIU's remit by virtue of—
    - (i) section 5(1)(a) (deaths part of caseload of Police Service Historical Enquiries Team), or
    - (ii) section 5(1)(c) (certain deaths between 11 April 1998 and 31 March 2004); and
  - (b) immediately before the specified day, the Police Service, or a police force in Great Britain, was conducting an investigation into the death.
- (2) The Director and the Chief Constable may, within the initial three month period, agree that it would be more appropriate for the Police Service, or the police force in Great Britain, to continue its investigation of the death, rather than for the HIU to begin an investigation of the death.
- (3) The Director may seek to enter into an agreement with the Chief Constable under this paragraph in relation to a death only if the Director is satisfied that—
  - (a) there are further investigative steps to be taken in relation to the investigation of the death; and
  - (b) taking into account (in particular) the need for the death to be investigated with reasonable expedition, it would be inappropriate for the HIU to begin an investigation of the death because the investigation by the Police Service or police force in Great Britain is at such an advanced stage.
- (4) Before making an agreement under this paragraph the Director must—
  - (a) consult such close family members, and such other family members, of the deceased as the Director considers appropriate, and
  - (b) have regard to their views.
- (5) Before making an agreement under this paragraph in a case where a police force in Great Britain was conducting an investigation into the death immediately before the specified day, the Director must also—
  - (a) consult the chief officer of the police force, and
  - (b) have regard to the chief officer's views.
- (6) In a case where the Director and the Chief Constable make an agreement under this paragraph, the death ceases to be within the HIU's remit from the time when the agreement comes into effect until the end of the transitional period.
- (7) After the end of the transitional period—
  - (a) sub-paragraph (8) applies in any case where an agreement has been made under this paragraph; and
  - (b) sub-paragraph (11) applies in a case where an agreement has been made under this paragraph that it would be more appropriate for the Police Service to continue its investigation into the death.

- (8) The investigatory function of the HIU is not exercisable in relation to the death unless condition A or condition B is met.
- (9) *Condition A*: the Director has reasonable grounds for believing that a criminal offence relating to the death has been committed and that there are reasonable investigative steps that the HIU could take which are capable of leading to –
  - (a) the identification of a person who committed that criminal offence, or
  - (b) the prosecution of a person for that criminal offence.
- (10) *Condition B*: the Director –
  - (a) decides that there are reasonable investigative steps that the HIU could take which are capable of leading to –
    - (i) the identification of a person whose conduct constitutes non-criminal police misconduct relating to the death, or
    - (ii) the initiation of disciplinary proceedings against a person for non-criminal police misconduct relating to the death, and
  - (b) considers that it is appropriate to investigate the misconduct because of –
    - (i) the gravity of the misconduct, or
    - (ii) exceptional circumstances.
- (11) If the investigatory function is not exercisable in relation to the death because neither condition A nor condition B is met, the HIU must –
  - (a) determine whether there is any information relating to the death in addition to that made available by the Police Service;
  - (b) use any information, documents or other material made available by the Police Service, and any additional information relating to the death, to produce a report on the death for the members of the family of the deceased (the “family report”).
- (12) Sections 17 to 19 apply to a family report produced under this paragraph as they apply to a family report produced after an investigation by the HIU.
- (13) The “transitional period” is the period which the Director and the Chief Constable agree is required for the Police Service or a police force in Great Britain to take further investigative steps in relation to the death.

*Deaths which the Ombudsman is to continue to investigate*

- 2 (1) This paragraph applies to a death if –
  - (a) the death is within the HIU’s remit by virtue of –
    - (i) section 5(1)(b) (deaths part of caseload of Ombudsman’s Historical Investigations Directorate), or
    - (ii) section 5(1)(c) (certain deaths between 11 April 1998 and 31 March 2004), and
  - (b) immediately before the specified day, the Ombudsman was conducting an investigation into the death.
- (2) The Director and the Ombudsman may, within the initial three month period, agree that it would be more appropriate for the Ombudsman to continue the investigation of the death, rather than for the HIU to begin an investigation of the death.

- 
- (3) The Director may seek to enter into an agreement with the Ombudsman under this paragraph in relation to a death only if the Director is satisfied that—
    - (a) there are further investigative steps to be taken in relation to the investigation of the death; and
    - (b) taking into account (in particular) the need for the death to be investigated with reasonable expedition, it would be inappropriate for the HIU to begin an investigation of the death because the investigation by the Ombudsman is at such an advanced stage.
  - (4) Before making an agreement under this paragraph the Director must—
    - (a) consult such close family members, and such other family members, of the deceased as the Director considers appropriate, and
    - (b) have regard to their views.
  - (5) In a case where the Director and the Ombudsman make an agreement under this paragraph, the death ceases to be within the HIU’s remit from the time when the agreement comes into effect until the end of the transitional period.
  - (6) Sub-paragraphs (7) and (10) apply after the end of the transitional period.
  - (7) The investigatory function of the HIU is not exercisable in relation to the death unless condition A or condition B is met.
  - (8) *Condition A*: the Director has reasonable grounds for believing that a criminal offence relating to the death has been committed and that there are reasonable investigative steps that the HIU could take which are capable of leading to—
    - (a) the identification of a person who committed that criminal offence, or
    - (b) the prosecution of a person for that criminal offence.
  - (9) *Condition B*: the Director—
    - (a) decides that there are reasonable investigative steps that the HIU could take which are capable of leading to—
      - (i) the identification of a person whose conduct constitutes non-criminal police misconduct relating to the death, or
      - (ii) the initiation of disciplinary proceedings against a person for non-criminal police misconduct relating to the death, and
    - (b) considers that it is appropriate to investigate the misconduct because of—
      - (i) the gravity of the misconduct, or
      - (ii) exceptional circumstances.
  - (10) If the investigatory function is not exercisable in relation to the death because neither condition A nor condition B is met, the HIU must—
    - (a) determine whether there is any information relating to the death in addition to that made available by the Ombudsman;
    - (b) use any information, documents or other material made available by the Ombudsman, and any additional information relating to the death, to produce a report on the death for the members of the family of the deceased (the “family report”).



- (11) Sections 17 to 19 apply to a family report produced under this paragraph as they apply to a family report produced after an investigation by the HIU.
- (12) The “transitional period” is the period which the Director and the Ombudsman agree is required for the Ombudsman to take further investigative steps in relation to the death.

*General provisions*

- 3 (1) In this Schedule “initial three month period” means the period of three months beginning with the specified day.
- (2) An agreement under paragraph 1(2) or 2(2) must be recorded in writing.
- (3) The transitional period relating to a death may be varied by agreement between—
  - (a) the Director and the Chief Constable (if the period was previously agreed between them), or
  - (b) the Director and the Ombudsman (if the period was previously agreed between them).
- (4) Such a variation must be recorded in writing.
- (5) In exercising operational control under section 9(1), the Director may take account of the possibility of an agreement under a provision of this Schedule being made in relation to the death.
- (6) For the purposes of this Schedule, the following matters (in particular) do not prevent the Director from forming a belief that reasonable investigative steps are capable of leading to the identification of a person, the prosecution of a person or the initiation of disciplinary proceedings against a person—
  - (a) that person’s physical or mental health at any time;
  - (b) that person’s absence from the jurisdiction at any time;
  - (c) the death of that person since the time when the criminal offence or non-criminal police misconduct occurred;
  - (d) the death of any other person since that time;
  - (e) the period that has elapsed since that time.

SCHEDULE 5

Section 8

SUBSTANTIALLY COMPLETE INVESTIGATIONS: HIU FUNCTIONS MODIFIED

*Modification of HIU’s functions*

- 1 (1) This Schedule applies to a death if it is—
  - (a) within the HIU’s remit by virtue of section 5(1)(a) and the Chief Constable has certified that the Police Service investigation of the death is substantially complete (see paragraph 2);
  - (b) within the HIU’s remit by virtue of section 5(1)(b) and the Ombudsman has certified that the HID investigation of the death is substantially complete (see paragraph 3); or
  - (c) within the HIU’s remit by virtue of section 5(1)(c).

- (2) The investigatory function of the HIU is not exercisable in relation to such a death unless condition A or condition B is met.
- (3) *Condition A*: the Director has reasonable grounds for believing that a criminal offence relating to the death has been committed and that there are reasonable investigative steps that the HIU could take which are capable of leading to –
- (a) the identification of a person who committed that criminal offence, or
  - (b) the prosecution of a person for that criminal offence.
- (4) *Condition B*: the Director –
- (a) decides that there are reasonable investigative steps that the HIU could take which are capable of leading to –
    - (i) the identification of a person whose conduct constitutes non-criminal police misconduct relating to the death, or
    - (ii) the initiation of disciplinary proceedings against a person for non-criminal police misconduct relating to the death, and
  - (b) considers that it is appropriate to investigate the misconduct because of –
    - (i) the gravity of the misconduct, or
    - (ii) exceptional circumstances.
- (5) If the investigatory function is not exercisable in relation to a death because neither condition A nor condition B is met, the HIU must –
- (a) determine whether there is any additional information relating to the death;
  - (b) use any existing information, documents or other material relating to the death, and any additional relevant information relating to the death, to produce a report on the death for the members of the family of the deceased (the “family report”).
- (6) For that purpose –
- “additional information” means information in addition to information made available by –
- (a) the Police Service, if the death is within the HIU’s remit by virtue of section 5(1)(a) or (1)(c), or
  - (b) the Ombudsman, if the death is within the HIU’s remit by virtue of section 5(1)(b) or (1)(c);
- “existing information, documents or other material” means information, documents, and other material made available by –
- (a) the Police Service, if the death is within the HIU’s remit by virtue of section 5(1)(a) or (1)(c), or
  - (b) the Ombudsman, if the death is within the HIU’s remit by virtue of section 5(1)(b) or (1)(c).
- (7) Sections 17 to 19 apply to a family report produced under this paragraph as they apply to a family report produced after an investigation by the HIU.
- (8) The following matters (in particular) do not prevent the Director from forming a belief that reasonable investigative steps are capable of leading to the identification of a person, the prosecution of a person or the initiation of disciplinary proceedings against a person –
- (a) that person’s physical or mental health at any time;

- (b) that person's absence from the jurisdiction at any time;
- (c) the death of that person since the time when the criminal offence or non-criminal police misconduct occurred;
- (d) the death of any other person since that time;
- (e) the period that has elapsed since that time.

*Death part of Police Service caseload*

- 2 (1) In the case of a death that is within the HIU's remit by virtue of section 5(1)(a), the Police Service investigation of a death is "substantially complete" if –
- (a) the Chief Constable has (in accordance with Schedule 3) certified that the Police Service investigatory process in relation to the death began before 23 December 2014 but was not completed by that date, and
  - (b) the Chief Constable is of the opinion that there are no further investigative steps for the Police Service to take in relation to the death.
- (2) The Chief Constable must –
- (a) produce and certify a statement of each death in relation to which the Police Service investigation is substantially complete, and
  - (b) give that certified statement to the HIU.
- (3) The Chief Constable must comply with those duties within the period of 14 days beginning with the specified day.
- (4) The duty imposed by this paragraph to certify the statement may only be performed by the Chief Constable (or a person exercising the functions of the Chief Constable in accordance with section 34 of the Police (Northern Ireland) Act 2000).

*Death part of Ombudsman's caseload*

- 3 (1) In the case of a death that is within the HIU's remit by virtue of section 5(1)(b), the Ombudsman's investigation of a death is "substantially complete" if –
- (a) the Ombudsman has (in accordance with Schedule 3) certified that an HID investigation in relation the death began before the specified day but had not been completed by the specified day, and
  - (b) the Ombudsman is of the opinion that the reason why the HID investigation had not been completed by the specified day is either that –
    - (i) the Ombudsman has decided that it is appropriate not to publish a statement about the investigation, or
    - (ii) the Ombudsman has not made such a decision, but has nevertheless not published such a statement.
- (2) The Ombudsman must –
- (a) produce and certify a statement of each death in relation to which the Ombudsman's investigation is substantially complete, and
  - (b) give that certified statement to the HIU.
- (3) The Ombudsman must comply with those duties within the period of 14 days beginning with the specified day.

## SCHEDULE 6

Section 8

## NEW EVIDENCE RELATING TO A DEATH

*DPP believes new evidence may be found*

- 1 (1) The Director of Public Prosecutions for Northern Ireland (the “DPP”) may refer a relevant death to the HIU if the DPP –
  - (a) is aware of new evidence relating to the death; and
  - (b) has reasonable grounds for believing that the new evidence (if found) would be capable of leading to –
    - (i) the identification of a person involved in the death, or
    - (ii) the prosecution of a person for a criminal offence relating to the death.
- (2) The investigatory function of the HIU is exercisable – or exercisable again – in relation to a relevant death if –
  - (a) the DPP refers the death to the HIU, and
  - (b) the investigatory function is not otherwise exercisable in relation to the death.
- (3) In a case where paragraph 1(1) of Schedule 4 applies to a death, the DPP may not refer the death to the HIU –
  - (a) during the initial three month period referred to in paragraph 1(2) of that Schedule, or
  - (b) if an agreement is made under paragraph 1(2) of that Schedule in relation to the death, during the transitional period.
- (4) See paragraph 3(5) of Schedule 3 for provision bringing certain deaths referred by the DPP within the HIU’s remit.
- (5) The DPP must exercise the function under sub-paragraph (1) in a manner that is consistent with the general principles.
- (6) In this paragraph “relevant death” means a death that –
  - (a) is part of the caseload of the Police Service Historical Enquiries Team;
  - (b) is part of the caseload of the Ombudsman’s Historical Investigations Directorate; or
  - (c) was wholly caused by physical injuries or physical illness that were or was the direct result of an act of violence or force that –
    - (i) has the required connection with Northern Ireland, and
    - (ii) was carried out in Northern Ireland during the period beginning with 11 April 1998 and ending with 31 March 2004;
 and expressions also used in section 5 have the same meanings here as in that section.

*HIU becomes aware of new evidence*

- 2 (1) The investigatory function of the HIU is exercisable – or exercisable again – in relation to a death if –
  - (a) condition A, B, or C is met;
  - (b) the HIU becomes aware of new evidence relating to the death; and

- (c) the Director forms the requisite view on the exercise of the investigatory function.
- (2) *Condition A*: the HIU has finished –
- (a) a criminal investigation in relation to the death, or
  - (b) a police misconduct investigation in relation to a death.
- Here “criminal investigation” and “police misconduct investigation” have the same meanings as in section 12.
- (3) *Condition B* –
- (a) the death was the subject of an agreement under paragraph 1 or 2 of Schedule 4 (that it would be more appropriate for the Police Service, a police force in Great Britain or the Ombudsman to continue to investigate the death), and
  - (b) the transitional period under that agreement has ended.
- (4) *Condition C*: the effect of section 9(4) or Schedule 5 is that the investigatory function of the HIU is not exercisable in relation to the death.
- (5) The Director “forms the requisite view on the exercise of the investigatory function” if –
- (a) the Director has reasonable grounds for believing that
    - (i) the new evidence is capable of leading to the identification of a person involved in the death, or
    - (ii) the prosecution of a person for a criminal offence relating to the death; or
  - (b) the Director –
    - (i) has reasonable grounds for believing that the new evidence is capable of leading to the initiation of disciplinary proceedings against a person for non-criminal police misconduct relating to the death, and
    - (ii) considers that it is appropriate to investigate the misconduct because of the gravity of the misconduct, or exceptional circumstances.

*Procedure for bringing new evidence to HIU’s attention*

- 3 The HIU –
- (a) must establish a procedure under which a relative of a deceased person may bring new evidence to the attention of the HIU for the purposes of paragraph 2 of this Schedule;
  - (b) may modify or replace the procedure;
  - (c) must publish, in the manner which the HIU considers appropriate, the procedure that is currently established.

*Interpretation*

- 4 (1) Evidence relating to a death is “new evidence” if the HIU –
- (a) did not previously know of the evidence, or
  - (b) did not previously know of the relationship between the evidence and the death.
- (2) For the purposes of paragraph 1 a person is “involved in” a death if the person committed a criminal offence relating to the death.

- (3) For the purposes of paragraph 2 a person is “involved in” a death if –
  - (a) the person committed a criminal offence relating to the death, or
  - (b) the person’s conduct constitutes non-criminal police misconduct relating to the death.
- (4) When the DPP is forming the belief about whether new evidence would be, or is, capable of leading to the identification of a person or the prosecution of a person, the DPP must –
  - (a) take account of the credibility of the new evidence, and
  - (b) take the new evidence into account with all other relevant matters; and the matters listed in sub-paragraph (6) (in particular) do not prevent the DPP from forming such a belief in relation to that person (“P”).
- (5) When the Director of the HIU is forming the belief about whether new evidence would be, or is, capable of leading to the identification of a person, the prosecution of a person or the initiation of disciplinary proceedings against a person, the Director must –
  - (a) take account of the credibility of the new evidence, and
  - (b) take the new evidence into account with all other relevant matters; and the matters listed in sub-paragraph (6) (in particular) do not prevent the Director from forming such a belief in relation to that person (“P”).
- (6) The matters referred to in sub-paragraphs (4) and (5) are –
  - (a) P’s physical or mental health at any time;
  - (b) P’s absence from the jurisdiction at any time;
  - (c) the death of P since the time when the criminal offence or non-criminal police misconduct occurred;
  - (d) the death of any other person since that time;
  - (e) the period that has elapsed since that time.
- (7) Sub-paragraphs (1) and (4) to (6) apply for the purposes of this Schedule.

## SCHEDULE 7

Section 24

## OPERATIONAL POWERS OF THE DIRECTOR AND OTHER HIU OFFICERS

*Designations and designated HIU officers*

- 1 In this Schedule –
  - “designated” means designated under section 24(1) or (2) (and “designation” is to be read accordingly);
  - “designated HIU officer” means the Director and any other HIU officer who is designated;
  - “operational powers” means the powers and privileges which a designated HIU officer has by virtue of a designation.

*Effect of designation*

- 2 (1) A designated HIU officer has, throughout Northern Ireland and the adjacent United Kingdom waters, all the powers and privileges for the time being exercisable there by a constable (whether at common law or under any statutory provision).

- (2) In this paragraph “United Kingdom waters” means the sea and other waters within the seaward limits of the territorial sea.

#### *Duration of designation*

- 3 (1) A designation has effect without limitation of time, unless the designation specifies a period for which it is to have effect.
- (2) But that is subject to any modification or withdrawal of the designation.
- (3) This paragraph does not apply to the designation of the Director under section 24(1).

#### *Limitations*

- 4 (1) A designation may be made subject to any limitations specified in the designation.
- (2) In particular, a designation may include—
- (a) limitations on which operational powers the designated HIU officer has;
  - (b) limitations on the purposes for which the designated HIU officer may exercise operational powers which he or she has.
- (3) Paragraph 2 has effect in relation to a designated HIU officer subject to any limitations specified in the HIU officer’s designation.
- (4) This paragraph does not apply to the designation of the Director under section 24(1).

#### *Evidence of designation*

- 5 (1) A designated HIU officer must produce evidence of the designation if—
- (a) the officer exercises, or purports to exercise, any operational power in relation to another person in reliance on the designation, and
  - (b) the other person requests the officer to produce such evidence.
- (2) If the designated HIU officer fails to produce such evidence, that failure does not make the exercise of the operational power invalid.

#### *Powers exercisable under warrant*

- 6 (1) This paragraph applies to an enactment if it provides for the issuing of warrants which authorise a constable to exercise any power or privilege of a constable.
- (2) For the purpose of enabling a designated HIU officer to exercise that power or privilege, the enactment has effect as if the designated HIU officer were a constable.

#### *Modification of references*

- 7 If a power or privilege of a constable is exercisable by any HIU officer, a reference to a constable in any enactment which relates to that power or privilege is to be taken to be, or to include, a reference to any HIU officer by whom that power or privilege is exercisable.

*Assaulting, resisting, obstructing or impeding a designated HIU officer*

- 8 (1) Any person who assaults, resists, obstructs or impedes –
- (a) a designated HIU officer in the execution of that officer’s duty, or
  - (b) a person assisting a designated HIU officer in the execution of that officer’s duty,
- is guilty of an offence.
- (2) A person guilty of an offence under this paragraph is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.
- (3) In this paragraph, the references to the execution of the duty of a designated HIU officer are references to –
- (a) the exercise of a power or privilege conferred by the HIU officer’s designation;
  - (b) the performance of a duty imposed by the HIU officer’s designation.

*Impersonation of a designated HIU officer*

- 9 (1) Any person who, with intent to deceive –
- (a) impersonates a designated HIU officer; or
  - (b) makes any statement or does any act calculated falsely to suggest that he is a designated HIU officer; or
  - (c) makes any statement or does any act calculated falsely to suggest that he or she has powers as a designated HIU officer that exceed the powers that he or she actually has,
- is guilty of an offence.
- (2) A person guilty of an offence under this paragraph is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine, or to both.

## SCHEDULE 8

Section 25

## BIOMETRIC MATERIAL

*Retention and use of material*

- 1 (1) None of the destruction provisions requires the destruction of –
- (a) a relevant DNA profile, or
  - (b) relevant fingerprints,
- if retention of the profile or fingerprints is authorised under this paragraph.
- (2) The retention of a relevant DNA profile is authorised if the person from whom the linked DNA sample was taken –
- (a) has been arrested for a specified offence at a time when he or she was aged 18 years or over, and



- (b) was born on or before 31 March 1986.
- (3) The retention of relevant fingerprints is authorised if the person from whom the fingerprints were taken –
  - (a) has been arrested for a specified offence at a time when he or she was aged 18 years or over, and
  - (b) was born on or before 31 March 1986.
- (4) The profile or fingerprints as so retained may only be used for the purposes of –
  - (a) the exercise by the HIU of its investigatory function, or
  - (b) the investigation of a death to which an agreement under paragraph 1 or 2 of Schedule 4 relates.
- (5) The profile or fingerprints may be so retained for the period of five years from the day on which this Schedule comes into force.

*Specified offences*

- 2 (1) A “specified offence” is an offence specified for the purposes of paragraph 1 in regulations made by –
  - (a) the Department of Justice, or
  - (b) the Secretary of State.
- (2) An offence may not be specified in regulations under this paragraph unless the Department of Justice, or the Secretary of State, is satisfied that the offence is of such a kind that the retention of relevant DNA profiles or relevant fingerprints in accordance with this Schedule is necessary and proportionate.

*Extension of period of retention*

- 3 (1) The Secretary of State may, by regulations, specify a period during which relevant DNA profiles and relevant fingerprints may continue to be retained and used in accordance with this Schedule (after the end of the period specified in paragraph 1(5) and any other period specified under this paragraph).
- (2) But, once the investigatory function of the HIU ceases to be exercisable under section 37 (including where that function ceases to be exercisable in accordance with regulations under section 37(2)), relevant DNA profiles and relevant fingerprints may not continue to be retained and used under the authority of regulations under this paragraph, except where they are retained or used –
  - (a) for the purpose of producing a family report, or
  - (b) for a purpose connected with the prosecution of a person for a criminal offence relating to a death that is within the HIU’s remit (including the purpose of deciding whether a person should be prosecuted for an offence).
- (3) Before making any regulations under this paragraph, the Secretary of State must consult –
  - (a) the HIU, and
  - (b) the Department of Justice.

*Interpretation*

- 4 (1) A DNA profile is a “relevant DNA profile” if—
- (a) the linked DNA sample meets condition A, and
  - (b) the DNA profile meets condition B.
- (2) Fingerprints are “relevant fingerprints” if they meet conditions A and B.
- (3) *Condition A*: the linked DNA sample was taken, or the fingerprints were taken, before 31 October 2013.
- (4) *Condition B*: the DNA profile is held, or the fingerprints are held, in a collection of records, or a part of a collection of records, that is specified for the purposes of this paragraph in regulations made by the Secretary of State.
- (5) The Secretary of State may specify a collection, or part of a collection, only if the Secretary of State considers that the collection, or part, contains records relating only to Northern Ireland.
- (6) The “destruction provisions” are—
- (a) Article 63B of the Police and Criminal Evidence (Northern Ireland) Order 1989;
  - (b) Article 64 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (but this Schedule does not authorise the retention of fingerprints taken under Article 61(6A) of that Order which are required to be destroyed under Article 64);
  - (c) any provision of Part 1 of Schedule 8 to the Terrorism Act 2000 which requires the destruction of biometric material;
  - (d) paragraph 8 of Schedule 4 to the International Criminal Court Act 2001;
  - (e) any provision of sections 18 to 18E of the Counter-terrorism Act 2008 which requires the destruction of biometric material;
  - (f) any provision of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 which requires the destruction of biometric material;
  - (g) section 18G of the Criminal Procedure (Scotland) Act 1995.
- (7) A “linked DNA sample”, in relation to a DNA profile, is a DNA sample from which that profile derived.
- (8) This paragraph applies for the purposes of this Schedule.

## SCHEDULE 9

Section 26

## IDENTIFICATION OF PREJUDICIAL, SENSITIVE OR PROTECTED INTERNATIONAL INFORMATION

*Identification of information by relevant authorities*

- 1 (1) If a relevant authority is proposing to make any information available to the HIU, the relevant authority must identify any of the information which (in the relevant authority’s opinion) is—
- (a) sensitive information, or
  - (b) prejudicial information.

- (2) When making the information available to the HIU, the relevant authority must notify the HIU of any of the information which the relevant authority has identified in accordance with sub-paragraph (1).
- (3) If a person is proposing to make any information available to the HIU, or has made any information available to the HIU, a relevant authority may identify any of the information which (in the relevant authority’s opinion) is –
  - (a) sensitive information, or
  - (b) prejudicial information.
- (4) The relevant authority must notify the HIU of any of the information which that relevant authority has identified in accordance with sub-paragraph (3).
- (5) A notification of information under this paragraph must include a statement of whether (in the relevant authority’s opinion) the information would, if disclosed generally, be –
  - (a) sensitive information,
  - (b) prejudicial information, or
  - (c) information of both of those kinds.

*Identification of information by the HIU*

- 2 (1) The HIU must, from time to time, identify any information held by the HIU which (in the HIU’s opinion) is –
  - (a) sensitive information, or
  - (b) prejudicial information.
- (2) That duty does not require the HIU to identify information as sensitive information, or as prejudicial information, if (in accordance with paragraph 1) a relevant authority has notified the HIU that that authority has identified the information as that kind of information.

*Identification of information by the Secretary of State*

- 3 The Secretary of State may notify the HIU of –
  - (a) any information which the HIU holds, or
  - (b) any information which any person is proposing to make available to the HIU,which (in the Secretary of State’s opinion) is protected international information.

SCHEDULE 10

Section 27

PERMITTED DISCLOSURES OF INFORMATION

*Introduction*

- 1 This Schedule sets out which disclosures of information are “permitted” for the purposes of section 27(2) and (3).

*Disclosure of any information to the Secretary of State*

- 2 A disclosure by the HIU of any information to the Secretary of State is permitted.

*Disclosure of sensitive information to certain recipients*

- 3 (1) A disclosure by the HIU of sensitive information—
- (a) to the Director of Public Prosecutions for Northern Ireland,
  - (b) to the Police Service,
  - (c) to an inspector of constabulary,
  - (d) to the Chief Inspector of Criminal Justice in Northern Ireland, or
  - (e) to a coroner in Northern Ireland or England and Wales who is—
    - (i) a judge of the High Court in Northern Ireland,
    - (ii) a judge of the High Court in England and Wales,
    - (iii) a county court judge in Northern Ireland, or
    - (iv) a Circuit judge in England and Wales,
- is permitted if the HIU notifies the Secretary of State that the HIU is proposing to make the disclosure and then makes the disclosure after the end of the relevant ten day period.
- (2) In this paragraph “relevant ten day period”, in relation to a disclosure of information by the HIU, means the period of ten working days beginning with the day on which notification of the proposed disclosure is given under sub-paragraph (1) — and here “working day” means any day other than—
- (a) a Saturday or a Sunday,
  - (b) Christmas Day or Good Friday, or
  - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

*Disclosure of sensitive information notified in advance to the Secretary of State*

- 4 (1) A disclosure by the HIU of sensitive information is permitted if—
- (a) the HIU notifies the Secretary of State that the HIU is proposing to make the disclosure, and
  - (b) either—
    - (i) during the relevant decision period, the Secretary of State has notified the HIU that the disclosure of the information is permitted, or
    - (ii) the relevant decision period has ended without the Secretary of State notifying the HIU that the disclosure is prohibited.
- (2) The Secretary of State may notify the HIU that the proposed disclosure is prohibited only if, in the Secretary of State’s view, the disclosure of the sensitive information would, or would be likely to, prejudice the national security interests of the United Kingdom.
- (3) If the Secretary of State notifies the HIU that the proposed disclosure is prohibited, the Secretary of State—
- (a) must consider whether reasons for prohibiting it can be given without disclosing information which would, or would be likely to, prejudice the national security interests of the United Kingdom;

- (b) and if they can be given, the Secretary of State must give those reasons.

*Disclosure of protected international information notified in advance to the Secretary of State*

- 5 (1) A disclosure by the HIU of protected international information is permitted if—
- (a) the HIU notifies the Secretary of State that the HIU is proposing to make the disclosure, and
  - (b) either—
    - (i) during the relevant decision period, the Secretary of State has notified the HIU that the disclosure of the information is permitted, or
    - (ii) the relevant decision period has ended without the Secretary of State notifying the HIU that the disclosure is prohibited.
- (2) The Secretary of State may notify the HIU that the proposed disclosure is prohibited only if, in the Secretary of State’s view, the disclosure of the protected international information would, or would be likely to, damage international relations.

*The “relevant decision period”*

- 6 (1) In paragraph 4 or 5 “relevant decision period” (in relation to a proposed disclosure notified to the Secretary of State) means—
- (a) the period of 60 days beginning with the day on which the HIU notifies the Secretary of State that the HIU is proposing to make disclosure, or
  - (b) any reasonable longer period which the Secretary of State specifies, in notice given to the HIU during that 60 day period, as the period which the Secretary of State wishes to take in order to make a decision whether to prohibit the proposed disclosure.
- (2) But if, on an appeal under section 21, the court directs the Secretary of State to remake a decision, “relevant decision period”—
- (a) means the period for remaking that decision in compliance with the direction; and
  - (b) if an appeal is brought against the court’s decision on the appeal, means the period until that appeal is concluded.

SCHEDULE 11

Section 27

OFFENCES RELATING TO DISCLOSURE OF INFORMATION

*Current HIU officers and members etc*

- 1 (1) A person who is the holder of a relevant position commits an offence if—
- (a) the person discloses information which the person obtained in his or her capacity as the holder of a relevant position, and
  - (b) the disclosure puts the HIU in breach of the duty of non-disclosure of information.

- (2) It does not matter whether the disclosure of information occurs within or outside the United Kingdom.
- (3) It is a defence for a person charged with an offence under this paragraph to prove that at the time of the alleged offence the person did not know, and had no reasonable cause to believe, that the disclosure of the information would put the HIU in breach of the duty of non-disclosure of information.

*Former HIU officers and members etc*

- 2 (1) A person who has ceased to be the holder of a relevant position commits an offence if—
  - (a) the person discloses information which the person obtained in his or her capacity as the holder of a relevant position, and
  - (b) the disclosure would, if it had been made by the HIU, have put the HIU in breach of the duty of non-disclosure of information.
- (2) It does not matter whether the disclosure of information occurs within or outside the United Kingdom.
- (3) It is a defence for a person charged with an offence under this paragraph to prove that at the time of the alleged offence the person did not know, and had no reasonable cause to believe, that the disclosure would, if it had been made by the HIU, have put the HIU in breach of the duty of non-disclosure of information.

*Penalties*

- 3 A person guilty of an offence under this Schedule is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;
  - (b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;
  - (c) on summary conviction in England and Wales, to imprisonment for a term not exceeding twelve months or a fine or both;
  - (d) on summary conviction in Scotland, to imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum or both;but, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in paragraph (c) to twelve months is to be read as a reference to six months.

*Interpretation*

- 4 (1) A reference in this Schedule to a person holding a relevant position is a reference to the person being—
  - (a) the Director,
  - (b) one of the other members of the HIU,
  - (c) an HIU officer, or
  - (d) a person providing, or employed in the provision of, goods or services for the purposes of the HIU.

- (2) The communication of information to a person who holds a relevant position is not a disclosure of the information for the purposes of this section.
- (3) The HIU is in breach of the duty of non-disclosure of information if a disclosure of information –
  - (a) contravenes section 7(2)(a) or (b) and is prohibited by section 27(2)(a); or
  - (b) is prohibited by section 27(2)(b).

## SCHEDULE 12

Section 28

### CO-OPERATION BETWEEN THE HIU AND OTHER BODIES

#### *Concurrent investigation by the Police Service*

- 1 (1) This paragraph applies if the Police Service is investigating, or is proposing to investigate, events which are linked (in any respect) to a death within the HIU's remit.
- (2) The Director and the Police Service must make such arrangements as they consider appropriate for co-operating in respect of –
  - (a) the investigation, or proposed investigation, of the events by the Police Service, and
  - (b) the investigation of the death by the HIU.
- (3) The arrangements may provide for the investigation by the Police Service to be suspended, or not to start, during the period when the HIU is conducting its investigation.
- (4) If the arrangements make that provision, during the period when the HIU is conducting its investigation a police officer is not required by section 32(1)(d) of the Police (Northern Ireland) Act 2000 to take measures to bring any offender to justice in respect of any offence arising from those events.

#### *Concurrent investigation by the Ombudsman*

- 2 (1) This paragraph applies if the Ombudsman is investigating, or is proposing to investigate, events which are linked (in any respect) to a death within the HIU's remit.
- (2) The Director and the Ombudsman must make such arrangements as they consider appropriate for co-operating in respect of –
  - (a) the investigation, or proposed investigation, of the events by the Ombudsman, and
  - (b) the investigation of the death by the HIU.
- (3) The arrangements may provide for the investigation by the Ombudsman to be suspended, or not to start, during the period when the HIU is conducting its investigation.
- (4) If the arrangements make that provision, during the period when the HIU is conducting its investigation –

- (a) section 52(8) of the Police (Northern Ireland) Act 1998 (complaint to Ombudsman to be dealt with in accordance with Part 7 of that Act), and
  - (b) section 55 of that Act (consideration of matters referred by the Chief Constable etc),
- do not apply to any complaint or matter relating to those events.

*Concurrent coroner's inquest*

- 3 (1) A coroner may not decide to hold an inquest into a death that is within the HIU's remit unless –
- (a) there are compelling reasons to do so, and
  - (b) either –
    - (i) a family report has been produced in relation to the death, or
    - (ii) the period of operation of the HIU has ended without a family report being produced in relation to the death.
- (2) But sub-paragraph (1) does not prevent the holding of an inquest –
- (a) in pursuance of a decision made by a coroner before the start of the period of operation of the HIU, or
  - (b) in compliance with a section 14 order given before the start of that period.
- (3) A section 14 order for the conduct of an inquest into a relevant death may not be given –
- (a) during the period of operation of the HIU, or
  - (b) after the end of that period unless there are compelling reasons to do so and either –
    - (i) a family report has been produced in relation to the death, or
    - (ii) the period of operation of the HIU has ended without a family report being produced in relation to the death.
- (4) If an inquest by a coroner into a relevant death is being held during the period of operation of the HIU, the Director and the coroner must make such arrangements as they consider appropriate for co-operating in respect of –
- (a) the inquest, and
  - (b) any investigation of the relevant death by the HIU.
- (5) The arrangements may provide for the HIU to carry out investigatory work on behalf of the coroner.
- (6) In this paragraph –
- “coroner” means a coroner appointed under the Coroners Act (Northern Ireland) 1959;
  - “period of operation of the HIU” means the period that –
    - (a) begins with the specified day, and
    - (b) ends with –
      - (i) the day on which the investigatory function of the HIU ceases to be exercisable in accordance with section 37(1) or regulations under section 37(2) (if that function ceases to be exercisable in that way), or
      - (ii) the day specified for the purposes of this paragraph in regulations made by the Secretary of State under



- section 37(3) (if the investigatory function does not cease to be exercisable as mentioned in subparagraph (i));
- “relevant death” has the meaning given in section 29(5);
- “section 14 order” means an order under section 14 of the Coroners Act (Northern Ireland) 1959 for the conduct of an inquest.

*Investigation of offences which do not relate to a death*

- 4 (1) If, as a result of the exercise of the investigatory function by the HIU, it appears to the Director that –
- (a) a criminal offence, other than a criminal offence relating to a relevant death, has been committed, and
  - (b) a person or body with the function of investigating crimes (whether in the United Kingdom, Ireland or elsewhere) should investigate that offence,
- the Director must notify that person or body of the offence and his or her view that it should be investigated.
- (2) If the Director notifies a person or body of such an offence, the HIU must co-operate with that person or body for the purpose of assisting the person or body in the exercise of the person’s or body’s functions in investigating the offence.
- (3) In this paragraph “relevant death” means a death that –
- (a) is part of the caseload of the Police Service Historical Enquiries Team;
  - (b) is part of the caseload of the Ombudsman’s Historical Investigations Directorate; or
  - (c) was wholly caused by physical injuries or physical illness that were or was the direct result of an act of violence or force that –
    - (i) has the required connection with Northern Ireland, and
    - (ii) was carried out in Northern Ireland during the period beginning with 11 April 1998 and ending with 31 March 2004;
- and expressions also used in section 5 have the same meanings here as in that section.

*Advice from the Director of Public Prosecutions*

- 5 The Director of Public Prosecutions for Northern Ireland must give the HIU such advice on matters relating to the prosecution of offences as appears to him or her to be appropriate.

*Co-operation with the Garda Síochána*

- 6 The HIU must implement any arrangements made in pursuance of any agreement between the United Kingdom and Ireland dealing with co-operation between the HIU and the Garda Síochána.

*Assistance between the HIU and the police etc*

- 7 (1) This paragraph applies where co-operation between the HIU and –
- (a) the Police Service,
  - (b) a police force in Great Britain,

- (c) the National Crime Agency,
  - (d) any of Her Majesty’s forces, or
  - (e) any other person operating in the United Kingdom charged with the duty of investigating criminal offences,
- takes the form of one of them giving assistance to the other.
- (2) Any such assistance is to be given in accordance with arrangements made between the Director and –
- (a) the Chief Constable, in the case of assistance given by or to the Police Service;
  - (b) the chief officer of the police force in Great Britain, in the case of assistance given by or to that force;
  - (c) the Director General of the National Crime Agency, in the case of assistance given by or to that Agency;
  - (d) the Secretary of State, in the case of assistance given by or to any of Her Majesty’s forces;
  - (e) the other person operating in the United Kingdom charged with the duty of investigating criminal offences, in the case of assistance given by or to that person.
- (3) The arrangements may provide for –
- (a) the HIU to give another person assistance by providing that person with equipment or HIU officers;
  - (b) another person to give the HIU assistance by providing it with equipment or personnel.
- (4) That does not limit the kinds of assistance that may be given.
- (5) If the HIU gives assistance under arrangements made under this paragraph –
- (a) the person receiving the assistance, or
  - (b) the relevant person (if any) specified in relation to that person in subparagraph (7),
- must pay the HIU such amount as may be agreed between them in respect of the assistance given.
- (6) If the HIU receives assistance under arrangements under this paragraph, the HIU must pay –
- (a) the person giving the assistance, or
  - (b) the relevant person (if any) specified in relation to that person in subparagraph (7),
- such amount as may be agreed between them in respect of the assistance given.
- (7) In this paragraph “relevant person” means –
- (a) in the case of the Police Service, the Policing Board;
  - (b) in the case of a police force maintained under section 2 of the Police Act 1996, the Police and Crime Commissioner for the police area for which that force is maintained;
  - (c) in the case of the metropolitan police force, the Mayor’s Office for Policing and Crime;
  - (d) in the case of the City of London police force, the Common Council of the City of London as police authority for the City of London police area;

- (e) in the case of the Police Service of Scotland, the Scottish Police Authority;
  - (f) in the case of the Ministry of Defence Police, the Secretary of State;
  - (g) in the case of the British Transport Police, the British Transport Police Authority;
  - (h) in the case of the National Crime Agency, the Director General of that Agency;
  - (i) in the case of any of Her Majesty’s forces, the Secretary of State.
- (8) This paragraph does not apply to any co-operation to which paragraph 8 applies.

*Sharing of facilities*

- 8 (1) This paragraph applies where co-operation between the HIU and the Police Service takes the form of the Police Service making facilities available for use by the HIU.
- (2) Any such facilities are to be made available in accordance with arrangements made between the Director and the Policing Board (“facility-sharing arrangements”).
- (3) If it appears to the Department of Justice –
- (a) that it is expedient for the HIU and the Policing Board to make facility-sharing arrangements, and
  - (b) that satisfactory facility-sharing arrangements cannot be made, or cannot be made in time,
- the Department of Justice may direct the Director and the Policing Board to make specified facility sharing-arrangements.
- (4) Facility-sharing arrangements must specify or describe the facilities which are to be made available for use by the HIU under the arrangements.
- (5) Facility-sharing arrangements may be varied or terminated by the parties.
- (6) But the arrangements may not be terminated without the consent of the Department of Justice, if the arrangements have been made in compliance with a direction by that Department.
- (7) Before giving a direction to the Director and the Policing Board under this paragraph, the Department of Justice must –
- (a) notify them of the proposal to give the direction, and
  - (b) consider any representations made by them.
- (8) In this paragraph “facilities” means –
- (a) premises,
  - (b) equipment, and
  - (c) other material, facilities and services.

## SCHEDULE 13

Section 31

## ESTABLISHMENT OF PROCEDURE FOR INVESTIGATION OF COMPLAINTS BY THE OMBUDSMAN

- 1 An agreement for the establishment in relation to designated HIU officers of procedures corresponding or similar to any of those established by virtue of Part 7 of the Police (Northern Ireland) Act 1998 may, with the agreement of the Department of Justice, be made between the Ombudsman and the Director.
- 2 An agreement under this Schedule may at any time be varied or terminated with the agreement of the Department of Justice.
- 3 The Director must consult the Policing Board before making, varying or terminating an agreement under this Schedule.
- 4 Where no agreement under this Schedule is in force in relation to designated HIU officers, the Department of Justice may by regulations establish such procedures.
- 5 Before making regulations under this Schedule the Department of Justice must consult –
  - (a) the Ombudsman;
  - (b) the Director; and
  - (c) the Policing Board.
- 6 Nothing in any other Act or in any Northern Ireland legislation prevents the HIU from carrying into effect procedures established by virtue of this Schedule.
- 7 In this Schedule “designated HIU officer” means the Director or any HIU officer designated under section 24 as having the powers and privileges of a constable.

## SCHEDULE 14

Section 32

## INSPECTION OF THE HIU

*Power of Chief Inspector of Criminal Justice to inspect the HIU*

- 1 (1) In section 46(1) of the Justice (Northern Ireland) Act 2002 (organisations subject to inspection by the Chief Inspector of Criminal Justice), after paragraph (hb) insert –
  - “(hc) the Historical Investigations Unit,”.
- (2) In its application to a report on an inspection and review of the HIU, section 49 of the Justice (Northern Ireland) Act 2002 (reports by the Chief Inspector) has effect subject to the following modifications –
  - (a) any reference to protected information has effect as a reference to sensitive information or protected international information;
  - (b) the Secretary of State may notify the inspectors that the inclusion of sensitive information in a report is prohibited only if, in the Secretary of State’s view, the disclosure of the information would, or would be likely to, prejudice the national security interests of the United Kingdom;

- (c) the Secretary of State may notify the inspectors that the inclusion of protected international information in a report is prohibited only if, in the Secretary of State’s view, the disclosure of the information would, or would be likely to, damage international relations.
- (3) In paragraph 4 of Schedule 8 to the Justice (Northern Ireland) Act 2002 (annual report by the Chief Inspector), any reference to protected information includes sensitive information and protected international information.

*Power of inspectors of constabulary to inspect the HIU*

- 2
- (1) An appropriate authority may request the inspectors of constabulary to inspect and report on the HIU; and the request may be confined to a particular part of the HIU, to particular matters or to particular activities of the HIU.
  - (2) If the inspectors of constabulary agree to a request made under this paragraph, the HIU inspection report must be made to the appropriate authority that made the request.
  - (3) The appropriate authority must defray any expenditure incurred for the purposes of or in connection with an inspection carried out in response to a request by that authority under this paragraph.
  - (4) In relation to a request for an inspection and report on the HIU, each of the following is an “appropriate authority” –
    - (a) the Department of Justice, except in relation to an inspection and report relating wholly or partly to non-devolved matters;
    - (b) the Secretary of State, but only in relation to an inspection and report relating wholly or partly to non-devolved matters.
  - (5) For that purpose, a report and inspection relating to “non-devolved matters” is a report and inspection on the HIU relating to –
    - (a) an excepted matter,
    - (b) a reserved matter, or
    - (c) a function conferred or imposed on the Secretary of State by or under an enactment;but a report and inspection does not relate to non-devolved matters if the report and inspection only incidentally relates to anything mentioned in paragraphs (a) to (c).

*Inspection reports containing sensitive information or protected international information*

- 3
- (1) If it appears to the Secretary of State that –
    - (a) the inspectors are required to prepare an inspection report under paragraph 2 on an inspection requested by the Department of Justice, and
    - (b) the report might contain (or once completed might contain) sensitive information or protected international information,the Secretary of State may require the inspectors to refer the report to the Secretary of State (or, if the report is not completed when the requirement is imposed, to refer the report once it is completed).
  - (2) If –

- 
- (a) it appears to the inspectors that an inspection report which they are required to prepare under paragraph 2 on an inspection requested by the Department of Justice might contain sensitive information or protected international information, and
  - (b) the inspectors have not been required to refer the report to the Secretary of State under sub-paragraph (1),
- the inspectors must refer the report to the Secretary of State.
- (3) Where the inspectors are required by sub-paragraph (1) or (2) to refer an inspection report to the Secretary of State, the inspectors must not disclose the report to anyone (apart from the Secretary of State) unless –
    - (a) during the relevant decision period the Secretary of State has notified the inspectors –
      - (i) that the inspection report does not contain any sensitive information or protected international information, or
      - (ii) that the report may be disclosed; or
    - (b) the relevant decision period has ended without the Secretary of State notifying the inspectors in accordance with paragraph (a)(i) or (ii).
  - (4) Where the inspectors are required by sub-paragraph (1) or (2) to refer an inspection report to the Secretary of State –
    - (a) the Secretary of State may direct the inspectors to exclude from the inspection report any information that, in the opinion of the Secretary of State, is sensitive information or protected international information,
    - (b) the inspectors must exclude that information from the inspection report,
    - (c) the Secretary of State must inform the Department of Justice that the Secretary of State has given a direction under paragraph (a), and
    - (d) the Secretary of State must lay before Parliament a statement that the Secretary of State has given a direction under paragraph (a).
  - (5) The Secretary of State may direct the inspectors to exclude sensitive information from an inspection report only if, in the Secretary of State's view, the disclosure of the information would, or would be likely to, prejudice the national security interests of the United Kingdom.
  - (6) The Secretary of State may direct the inspectors to exclude protected international information from an inspection report only if, in the Secretary of State's view, the disclosure of the information would, or would be likely to, damage international relations.
  - (7) When the inspectors provide the Department of Justice with inspection report from which information has been excluded under subsection (4), they must at the same time provide the report to the Secretary of State.

#### *Publication of inspection reports*

- 4 (1) The appropriate authority must arrange for an inspection report received by it under paragraph 2 to be published in the manner which that authority considers appropriate.
- (2) The appropriate authority may exclude from publication under sub-paragraph (1) any part of an inspection report if, in that authority's opinion, the publication of that part –

- (a) would be prejudicial to public order; or
  - (b) might put at risk the life or safety of any person.
- (3) If the inspection report has been made on an inspection requested by the Secretary of State, the Secretary of State may also exclude from publication under sub-paragraph (1) any information that, in the opinion of the Secretary of State, is sensitive information or protected international information.
- (4) The Secretary of State may exclude sensitive information from publication only if, in the Secretary of State’s view, the disclosure of the information would, or would be likely to, prejudice the national security interests of the United Kingdom.
- (5) The Secretary of State may exclude protected international information from publication only if, in the Secretary of State’s view, the disclosure of the information would, or would be likely to, damage international relations.
- (6) The appropriate authority must send a copy of an inspection report published by it to –
- (a) the HIU;
  - (b) the Policing Board; and
  - (c) the Chief Inspector of Criminal Justice in Northern Ireland.
- (7) The Policing Board must invite the HIU to submit comments on the published report to the Policing Board before such date as the Policing Board may specify.
- (8) The Policing Board must prepare comments on the published report and must arrange for –
- (a) its comments;
  - (b) any comments submitted by the HIU in accordance with sub-paragraph (7); and
  - (c) any response which the Policing Board has to the comments submitted by the HIU,
- to be published in the manner which the Policing Board considers appropriate.
- (9) The Policing Board must send a copy of any document published under sub-paragraph (8) to the appropriate authority who requested the inspection to which the document relates.

### *Interpretation*

- 5 (1) In this Schedule –
- “appropriate authority” has the meaning given in paragraph 2;
  - “inspection report” means the report on the HIU made on an inspection carried out in response to a request under paragraph 2;
  - “relevant decision period” means –
- (a) the period of 30 days beginning with the day on which the inspectors refer the inspection report to the Secretary of State under paragraph 3(1) or (2), or
  - (b) such longer period as may be agreed between the Secretary of State and the Department of Justice.

- (2) For the meaning of “sensitive information” and “protected international information” see section 39.

## SCHEDULE 15

Section 32

## OVERSIGHT OF THE HIU

## PART 1

## GENERAL OVERSIGHT BY THE POLICING BOARD

*Accounts*

- 1 (1) The Policing Board must, in relation to all of the HIU’s funding—
- (a) keep proper accounts and proper records in relation to the accounts; and
  - (b) prepare a statement of accounts in respect of each financial year.
- (2) Each statement of accounts must contain such information and must be in such form as the Department of Justice may determine.
- (3) The functions of the Policing Board under this paragraph are to be exercised by the HIU on behalf of, and in the name of, the Policing Board.
- (4) In this paragraph “HIU’s funding” means the amounts put at the HIU’s disposal under section 4(1)(b).

*Audit*

- 2 (1) The HIU must submit each statement of accounts to the Policing Board within such period after the end of the financial year to which the accounts relate as the Department of Justice may determine.
- (2) The Policing Board must send copies of each statement of accounts to the Department of Justice and the Comptroller and Auditor General for Northern Ireland within such further period as the Department of Justice may determine.
- (3) The Comptroller and Auditor General for Northern Ireland must—
- (a) examine, certify and report on each statement of accounts received under this paragraph; and
  - (b) give a copy of each such report to the Policing Board.
- (4) The Policing Board must lay before the Northern Ireland Assembly—
- (a) a copy of each statement of accounts, and
  - (b) a copy of each report given by the Comptroller and Auditor General for Northern Ireland under sub-paragraph (3)(b).
- (5) The functions of the Policing Board under this paragraph are to be exercised by the HIU on behalf of, and in the name of, the Policing Board.
- (6) In this paragraph “statement of accounts” means the statement of accounts prepared in accordance with paragraph 1.



*Monitoring performance of the HIU*

- 3 (1) The Policing Board must –
  - (a) monitor the performance of the HIU in the exercise of functions in relation to transferred matters, and
  - (b) hold the HIU to account for its performance in that respect.
- (2) In monitoring the HIU and holding it to account, the Policing Board must (in particular) consider the extent to which the HIU’s functions have been exercised in accordance with –
  - (a) the statements issued under section 6 and 23, and
  - (b) its human rights obligations (taking into account those statements).

*Keeping informed about the HIU’s caseload*

- 4 (1) The Policing Board must keep itself informed of statistical information relating to the caseload of the HIU.
- (2) In particular, the Policing Board must keep itself informed of –
  - (a) the number of each of the following kinds of deaths –
    - (i) deaths in respect of which the Police Service investigatory process has been certified by the Chief Constable as completed by 23 December 2014 (see paragraph 4(3)(b)(ii) of Schedule 3);
    - (ii) deaths in respect of which an HID investigation has been certified by the Ombudsman as completed by the specified day (see paragraph 5(3)(b)(ii) of Schedule 3);
    - (iii) deaths of the kind described in section 5(1)(c);
  - (b) the number of each of those kinds of deaths that are within the HIU’s remit;
  - (c) the number of each of those kinds of deaths that are not within the HIU’s remit.

*Keeping informed about the HIU’s complaints and disciplinary procedures*

- 5 The Policing Board must keep itself informed of the workings of the procedures for dealing with complaints, and for disciplining HIU officers, established under section 31.

*Assessing effectiveness of the HIU’s code of ethics*

- 6 (1) The Policing Board must assess the effectiveness of the code of ethics produced under section 30.
- (2) In particular, the Policing Board must assess the effectiveness of the steps taken by the HIU to ensure that members of the HIU and HIU officers have read and understood the code of ethics as currently in force.

*Obtaining the co-operation of the public with the HIU*

- 7 The Policing Board must make arrangements for obtaining the co-operation of the public with the HIU.

## PART 2

## REPORTS AND MEETINGS

*Annual report by Policing Board*

- 8 (1) The Policing Board must, not later than six months after the end of each financial year of the HIU, issue a report relating to the HIU's activities for the year.
- (2) A report issued under this paragraph for any year must include –
- (a) an assessment of the performance of the HIU in exercising its functions in relation to transferred matters (as monitored by the Policing Board in accordance with paragraph 3(1)(a));
  - (b) an assessment of the statistical information of which the Policing Board has kept itself informed in accordance with paragraph 4;
  - (c) an assessment of the workings of the procedures for dealing with complaints, and for disciplining HIU officers, established under section 31;
  - (d) the assessment (required by paragraph 6) of the effectiveness of the code of ethics as currently in force;
  - (e) an assessment of the effectiveness of the arrangements for obtaining the co-operation of the public made in accordance with paragraph 7.
- (3) The Policing Board may combine a report issued under this paragraph with a report relating to the policing of Northern Ireland issued under section 57 of the Police (Northern Ireland) Act 2000.
- (4) The Policing Board must –
- (a) arrange for every report issued under this paragraph to be published in the manner which the Policing Board considers appropriate; and
  - (b) send a copy of the report to the Department of Justice.

*Public meetings*

- 9 (1) In each year, the Policing Board must hold at least two meetings for the purpose of receiving and considering one or more reports which the Policing Board has received from the HIU under Part 1 of Schedule 16.
- (2) The Director must attend such a meeting.
- (3) The Policing Board must give such a period of notice of such a meeting as it considers reasonable.
- (4) Members of the public may attend any such meeting.
- (5) But that does not prevent the Policing Board from excluding the public, or particular members of the public, from such a meeting, or from part of such a meeting, in order to prevent or suppress disorderly conduct or other misbehaviour at, or a disturbance of, the meeting.
- (6) The Policing Board may combine a meeting under this paragraph with a meeting under paragraph 19 of Schedule 1 to the Police (Northern Ireland) Act 2000 held to receive and consider a report from the Chief Constable.
- (7) The Director General of the National Crime Agency may not be given notice under paragraph 19A of Schedule 1 to the Police (Northern Ireland) Act 2000

of a meeting that is to be held in accordance with this paragraph of this Schedule.

*Attendance of Director at other meetings*

- 10 (1) The Director must attend a meeting of the Policing Board (other than a meeting under paragraph 9) if the Policing Board gives the Director a reasonable period of notice of the meeting.
- (2) The Director may not be given notice under this paragraph of—
- (a) a meeting that is to be held in accordance with paragraph 18 or 19A of Schedule 1 to the Police (Northern Ireland) Act 2000, or
  - (b) a meeting that is to be held in accordance with paragraph 19 of Schedule 1 to the Police (Northern Ireland) Act 2000, unless it is combined with a meeting to be held in accordance with paragraph 9 of this Schedule.

PART 3

INQUIRIES

*Inquiry by Policing Board following report by HIU*

- 11 (1) Where the Policing Board—
- (a) has considered a report on any matter which the Policing Board has received from the HIU under Part 1 of Schedule 16, and
  - (b) considers that an inquiry ought to be held under this paragraph into that matter or any related matter disclosed in the report by reason of the gravity of the matter or exceptional circumstances,
- the Policing Board may, after consultation with the HIU, cause such an inquiry to be held.
- (2) The Policing Board must immediately—
- (a) inform the HIU and the Department of Justice of any decision to cause an inquiry to be held under this paragraph and of any matter into which the inquiry is to be made; and
  - (b) send a copy of the relevant report under Part 1 of Schedule 16 to the Department of Justice.
- (3) The power under this paragraph to cause an inquiry to be held is subject to paragraphs 12 to 15.
- (4) The Policing Board may request a person mentioned in sub-paragraph (6) to conduct an inquiry under this paragraph.
- (5) The person mentioned in sub-paragraph (6)—
- (a) may comply with the request under sub-paragraph (4), and
  - (b) must do so if so directed by the Department of Justice.
- (6) The persons are—
- (a) the Comptroller and Auditor General for Northern Ireland;
  - (b) the Ombudsman;
  - (c) an inspector of constabulary.

- 
- (7) The Policing Board may, with the agreement of the Department of Justice, appoint any other person to conduct an inquiry under this paragraph.
  - (8) An inquiry under this paragraph is to be held in public except where the person conducting it decides that it is necessary in the public interest not to do so.
  - (9) Paragraphs 3 to 6 of Schedule A1 to the Interpretation Act (Northern Ireland) 1954 (provisions applicable to inquiries etc under Northern Ireland legislation) apply to an inquiry under this paragraph with the substitution for references to the Department of references to the person conducting the inquiry.
  - (10) The Policing Board may pay –
    - (a) any expenses reasonably incurred by the person conducting an inquiry under this paragraph; and
    - (b) any expenses reasonably incurred by any parties appearing at such an inquiry.
  - (11) The Policing Board must send a copy of the report of any inquiry under this paragraph to –
    - (a) the HIU, and
    - (b) the Department of Justice.
  - (12) The report of the person conducting an inquiry under this paragraph must be published, unless the person conducting the inquiry decides it is necessary in the public interest not to publish it.
  - (13) If the report is not published, a summary of the findings and conclusions of the inquiry must be made known by the Policing Board so far as appears to it consistent with the public interest.

*Inquiry involving matters of interest to the Secretary of State*

- 12 (1) This paragraph applies where it appears to the Policing Board that an inquiry under paragraph 11 may relate wholly or in part to –
  - (a) a matter in respect of which a function is conferred or imposed on the Secretary of State by or under a statutory provision, or
  - (b) an excepted matter or a reserved matter.
- (2) The Policing Board must immediately –
  - (a) inform the Secretary of State of the decision to cause the inquiry to be held and of any matter into which inquiry is to be made, and
  - (b) send a copy of the relevant report under Part 1 of Schedule 16 to the Secretary of State.

*Inquiry affecting national security*

- 13 (1) The HIU must refer to the Secretary of State the decision of the Policing Board to cause an inquiry to be held under paragraph 11 if it appears to the HIU that, in the interests of national security, such an inquiry ought not to be held.
- (2) The Secretary of State may overrule the decision of the Policing Board within –

- (a) the period of 30 days from the date of referral of the decision of the Policing Board by the HIU, or
  - (b) such longer period as may be agreed between the Policing Board and the Secretary of State.
- (3) The Secretary of State may overrule the Policing Board only if in the Secretary of State’s opinion, in the interests of national security, the inquiry ought not to be held.

*Inquiry affecting personnel matters or prejudice to proceedings*

- 14 (1) The HIU must refer to the Department of Justice the decision of the Policing Board to cause an inquiry to be held under paragraph 11 if it appears to the HIU that such an inquiry ought not to be held on the ground that—
- (a) any matter into which inquiry is to be made is a personnel matter, or
  - (b) the inquiry would, or would be likely to, prejudice proceedings which have been commenced in a court of law.
- (2) The Department of Justice may overrule the decision of the Policing Board within—
- (a) the period of 30 days from the date of referral of the decision of the Policing Board by the HIU, or
  - (b) such longer period as may be agreed between the Policing Board and the Department of Justice.
- (3) The Department of Justice may overrule the Policing Board only if, in the opinion of the Department of Justice, the inquiry ought not to be held on the ground mentioned in sub-paragraph (1)(a) or (b).
- (4) In this paragraph “personnel matter” means a matter which relates to a person’s—
- (a) application for employment as an HIU officer,
  - (b) appointment as an HIU officer, or
  - (c) employment as an HIU officer (whether or not the person is still so employed).

*Meeting of Policing Board relating to inquiry*

- 15 (1) Paragraph 18 of Schedule 1 to the Police (Northern Ireland) Act 2000 applies to an inquiry under paragraph 11 of this Schedule as it applies to an inquiry under section 60 of the 2000 Act.
- (2) In the application of paragraph 18 of the 2000 Act to an inquiry under paragraph 11 of this Schedule—
- (a) the reference to section 60 of that Act has effect as a reference to paragraph 11;
  - (b) the reference to section 60(6) of that Act has effect as a reference to paragraph 11(4);
  - (c) the reference to section 60(9) of that Act has effect as a reference to paragraph 11(7).

## SCHEDULE 16

Section 33

## REPORTING AND INFORMATION FOR OVERSIGHT

## PART 1

## REPORTS

*Annual report*

- 1 (1) No later than three months after the end of each financial year, the HIU must—
  - (a) give the Policing Board a report on the exercise of the HIU's functions during that financial year, and
  - (b) give the Department of Justice a copy of the report.
- (2) Each annual report must include a statement of the number of disclosures of information which the Secretary of State has, in the financial year concerned, notified under paragraph 4 of Schedule 10 as being prohibited.
- (3) The HIU must—
  - (a) lay before the Northern Ireland Assembly a copy of every report given to the Policing Board under this paragraph; and
  - (b) publish every such report in the manner which the HIU considers appropriate.
- (4) The HIU must give a copy of each annual report to—
  - (a) the Independent Commission on Information Retrieval,
  - (b) the Deputy Keeper of Records of Northern Ireland, and
  - (c) the Implementation and Reconciliation Group.

*Power of Policing Board, Department of Justice or Secretary of State to require reports*

- 2 (1) The HIU must, whenever so required by an appropriate authority, submit to that authority a report on any matter connected with the exercise of the HIU's functions.
- (2) A report under this paragraph must be made—
  - (a) in such form as may be specified in the requirement under sub-paragraph (1); and
  - (b) within the period of one month from the date on which that requirement is made or within such longer period as may be agreed between the HIU and the appropriate authority.
- (3) The Policing Board must determine the procedures to be followed by it in exercising its power under sub-paragraph (1).
- (4) The Policing Board—
  - (a) must publish, in the manner which the Policing Board considers appropriate, the procedures determined by it under sub-paragraph (3); and
  - (b) must not exercise its power under sub-paragraph (1) otherwise than in accordance with those procedures.

*Other reports to the Secretary of State, Department of Justice or Policing Board*

- 3 The HIU may give an appropriate authority a report on any matter coming to the HIU's attention which the HIU considers should be drawn to that authority's attention.

*Publication of reports*

- 4 An appropriate authority may arrange, or require the HIU to arrange, for a report made to that authority under paragraph 2 or 3 to be published in the manner which that authority considers appropriate.

*What is the "appropriate authority"?*

- 5 (1) In relation to a report on a matter under paragraph 2 or 3, each of the following is an "appropriate authority" –
- (a) the Department of Justice, except in relation to a report on a non-devolved matter;
  - (b) the Policing Board, except in relation to a report on a non-devolved matter;
  - (c) the Secretary of State, but only in relation to a report on a non-devolved matter.
- (2) Here, a report on a "non-devolved matter" is a report relating to –
- (a) an excepted matter,
  - (b) a reserved matter, or
  - (c) a function conferred or imposed on the Secretary of State by or under an enactment;
- but a report is not a report on a non-devolved matter if the report only incidentally relates to anything mentioned in paragraphs (a) to (c).

*Reports to the Implementation and Reconciliation Group*

- 6 (1) The HIU must provide the Implementation and Reconciliation Group with a written report on –
- (a) patterns and themes it has identified from its work, and
  - (b) the level of co-operation it has received in carrying out its work.
- (2) Sub-paragraph (1) does not prevent the HIU from providing the Implementation and Reconciliation Group with an interim report on any of those matters before the HIU provides the Group with the report in accordance with that sub-paragraph.
- (3) The HIU must provide the Implementation and Reconciliation Group with the report under sub-paragraph (1) on the last day of the period of 5 years beginning with the day on which this paragraph comes into force (or, if that day is not a working day, on the last working day before it).
- (4) A report provided to the Implementation and Reconciliation Group in accordance with this paragraph –
- (a) must be given by the HIU only to the person chairing that Group; and
  - (b) must not be otherwise disclosed by the HIU unless –

- (i) the report has been shared by the person chairing that Group in accordance with section 61 and that person has authorised the HIU to disclose the report; or
- (ii) the academic report commissioned in accordance with section 62 has been produced.

## PART 2

### INFORMATION

#### *Information for the Policing Board*

- 7 (1) The HIU must give the Policing Board such—
- (a) information, and
  - (b) documents,
- as the Policing Board may require for the purposes of, or in connection with, the exercise of any function of the Policing Board.
- (2) A requirement under this paragraph may specify—
- (a) the form in which information is to be given, or
  - (b) the manner in which documents are to be given.
- (3) The Policing Board may require the HIU to publish, in the manner which the Policing Board considers appropriate, information or documents provided in accordance with a requirement under this paragraph.
- (4) The Policing Board may cause a consolidated and classified abstract of any information in the form of statistical data that is provided in accordance with this paragraph to be prepared and published in the manner which the Policing Board considers appropriate, but only if the information itself has not been published in accordance with sub-paragraph (3).

#### *Information for the Department of Justice*

- 8 (1) The HIU must give the Department of Justice such information as the Department may require for the purposes of, or in connection with, the exercise of any function of the Department.
- (2) A requirement under this paragraph may specify the form in which information is to be given.
- (3) The Department of Justice may require the HIU to publish, in the manner which the Department considers appropriate, information provided in accordance with a requirement under this paragraph.
- (4) The Department of Justice may cause a consolidated and classified abstract of any information in the form of statistical data that is provided in accordance with this paragraph to be prepared and laid before the Northern Ireland Assembly, but only if the information itself has not been published in accordance with sub-paragraph (3).

#### *Information for the Secretary of State*

- 9 (1) The HIU must give the Secretary of State such information as the Secretary of State may require for the purposes of, or in connection with, the exercise of any relevant function.



- (2) A requirement under this paragraph may specify the form in which information is to be given.
- (3) The Secretary of State may require the HIU to publish, in the manner which the Secretary of State considers appropriate, information provided in accordance with a requirement under this paragraph.
- (4) The Secretary of State may cause a consolidated and classified abstract of any information in the form of statistical data that is provided in accordance with this paragraph to be prepared and laid before Parliament, but only if the information itself has not been published in accordance with subparagraph (3).
- (5) In this paragraph “relevant function” means a function of the Secretary of State which –
  - (a) relates to an excepted matter,
  - (b) relates to a reserved matter, or
  - (c) is conferred or imposed on the Secretary of State by or under an enactment.

## SCHEDULE 17

Section 59

### THE IMPLEMENTATION AND RECONCILIATION GROUP

#### *IRG not a Crown body*

- 1 (1) The IRG is not a servant or agent of the Crown.
- (2) The IRG does not enjoy any status, privilege or immunity of the Crown.
- (3) The property of the IRG is not property of, or property held on behalf of, the Crown.

#### *Membership*

- 2 (1) The IRG is to consist of the following members –
  - (a) one member to chair the IRG, who may be of international standing, appointed by the First Minister and deputy First Minister acting jointly;
  - (b) one member appointed by the Secretary of State;
  - (c) one member appointed by a minister in the Government of Ireland;
  - (d) eight other members (see paragraph 3).
- (2) The relevant appointing authority may remove a member of the IRG from office by giving the member written notice of removal.
- (3) If the IRG is satisfied that a member of the IRG has breached the duty in section 61(6) by disclosure of any of the contents of a relevant report, the IRG may remove the member from office by giving him or her written notice of removal.
- (4) The IRG may suspend the power of the relevant appointing authority to appoint a member of the IRG if the IRG –

- (a) exercises the power in sub-paragraph (3) to remove one of the eight members referred to in sub-paragraph 2(1)(d) from office, and
  - (b) is satisfied that it is appropriate to suspend the power of appointment;but the period for which the power of appointment is suspended must not exceed six months.
- (5) The First Minister and deputy First Minister acting jointly must issue a statement about the ways in which they are to exercise the functions of –
  - (a) removing the member appointed under sub-paragraph (1)(a) to chair the IRG, including in response to a breach by that member of the duty in section 61(2); and
  - (b) appointing a person to chair the IRG after the removal of the holder of that office.
- (6) The members of the IRG are to hold office subject to the terms and conditions determined by the First Minister and deputy First Minister acting jointly (and any provision about removal from office included in those terms and conditions is in addition to the powers of removal in sub-paragraphs (3) and (5)).
- (7) The terms and conditions for each member of the IRG – except the member appointed under sub-paragraph (1)(a) to chair the IRG – must be the same, subject to any variation that is required by law.
- (8) If the member appointed to chair the IRG is unable or unwilling to act, or if that office is vacant, the First Minister and deputy First Minister acting jointly may nominate one of the other members of the IRG to chair it temporarily.
- (9) A reference in this Act to the person chairing the IRG is a reference to the person doing so by virtue of an appointment under sub-paragraph (1)(a) or a nomination under sub-paragraph (8)).
- (10) A person may not be appointed as a member of the IRG if –
  - (a) the person is insolvent; or
  - (b) the person is disqualified from being a company director.
- (11) That reference to a person being insolvent, or disqualified from being a company director, has the meaning given in paragraph 16, or paragraph 17, of Schedule 2.
- (12) Articles 2 and 3 of the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 are to apply to the members of the IRG as they apply to the offices and employments specified in Part 2 of Schedule 1 to that Order.
- (13) In this paragraph
  - “relevant 14 day period”, in relation to the appointment of a person to replace a member of the IRG removed from office, means the period of 14 days beginning with the day when that member leaves office;
  - “relevant appointing authority” means –
    - (a) in relation to a member of the IRG appointed under sub-paragraph (1)(a), the First Minister and deputy First Minister acting jointly;

- (b) in relation to a member of the IRG appointed under subparagraph (1)(b), the Secretary of State;
- (c) in relation to a member of the IRG appointed under subparagraph (1)(c), a minister in the Government of Ireland;
- (d) in relation to a member of the IRG appointed under subparagraph (1)(d), the nominating officer of the political party by whose nominating officer he or she was nominated for membership of the IRG.

*Members nominated by political parties*

- 3 (1) A person is to be one of the eight other members of the IRG mentioned in paragraph 2(1)(d) if –
- (a) the nominating officer of a political party referred to in paragraph 54 of the Stormont House Agreement nominates that person for membership of the IRG, and
  - (b) the person accepts that nomination.
- (2) The nomination of a person for membership of the IRG ceases to be effective (and therefore cannot be accepted) at the end of the period of 14 days beginning with the day on which the nomination was made.
- (3) The nomination of one or more persons by a party’s nominating officer (a “new nomination”) is invalid if, at the time the new nomination is made, the number of outstanding and accepted nominations made by the party’s nominating officer (including the new nomination) exceeds the party’s membership entitlement.
- (4) The nominating officer of the political party that made the nomination must notify the First Minister and deputy First Minister of the name of the person who has accepted the nomination.
- (5) In this paragraph, in relation to a political party –
- “membership entitlement” means the number of members of the IRG specified in relation to that party in paragraph 54 of the Stormont House Agreement;
  - “nominating officer” means –
    - (a) the person registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 as the party’s nominating officer, or
    - (b) a member of that political party nominated by that person for the purposes of this paragraph;
  - “outstanding and accepted nominations” means –
    - (a) the nominations (if any) made by that party’s nominating officer which are effective but have not yet been accepted, and
    - (b) the nominations (if any) made by that party’s nominating officer as a result of which the nominated persons are members of the IRG.

*Persons holding public elected positions not to be members of IRG*

- 4 (1) A person who holds a relevant office may not be –

- (a) appointed to be member of the IRG under paragraph 2(1)(a) to 2(1)(c), or
  - (b) nominated for membership of the IRG under paragraph 3.
- (2) A person ceases to be a member of the IRG if the person begins to hold a relevant office.
- (3) A reference in this paragraph to a person who holds a relevant office is a reference to a person who is –
- (a) a member of the Northern Ireland Assembly;
  - (b) a councillor (within the meaning of the Local Government Act (Northern Ireland) 2014 – see section 126(1) of that Act);
  - (c) a Member of Parliament;
  - (d) a member of the House of Lords;
  - (e) a member of the Dáil Éireann (House of Representatives of Ireland);
  - (f) a member of the Seanad Éireann (Senate of Ireland);
  - (g) a member of the European Parliament (from any member State).

#### *Powers*

- 5 (1) The IRG may do anything that it thinks necessary or expedient in connection with the exercise of its functions.
- (2) In particular, the IRG may –
- (a) employ staff or make arrangements for persons to be seconded to serve as members of staff;
  - (b) enter into contracts and other agreements (whether legally binding or not), and
  - (c) acquire and dispose of property (including land).
- (3) But the IRG may not borrow money.
- (4) The number of staff employed or seconded by the IRG, and the terms and conditions of their employment or secondment, are to be determined by the IRG, with the agreement of the First Minister and deputy First Minister acting jointly.
- (5) If a person –
- (a) is appointed as a member of the IRG, or
  - (b) is appointed or seconded as one of the staff of the IRG,
- on terms or conditions which provide for any remuneration, pensions, allowances, gratuities or compensation to be payable to, or in respect of, the person, it is for the IRG to make payments of, or payments towards the provision of, them.
- (6) Articles 2 and 3 of the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 are to apply to the staff of the IRG as they apply to the offices and employments specified in Part 2 of Schedule 1 to that Order

#### *Procedure*

- 6 (1) The quorum of the IRG is 7 members, of whom –
- (a) one must be the member chairing the IRG;
  - (b) one must be the member appointed under paragraph 2(1)(b);
  - (c) one must be the member appointed under paragraph 2(1)(c).

- (2) A decision of the IRG is not valid unless it is agreed by at least two-thirds of members participating.
- (3) But in relation to the exercise of the IRG's powers under paragraph 2(3) or 2(4) the member whose removal is in question –
  - (a) is not to be counted when determining whether the IRG is quorate;
  - (b) is not required by sub-paragraph (1) to be present for the IRG to be quorate;
  - (c) is not to be counted as a participating member when determining whether a decision of the IRG is valid.
- (4) Subject to those provisions, the IRG may regulate its own procedure.

#### *Validity of proceedings*

- 7 (1) The validity of any proceedings of the IRG is not affected by –
  - (a) any vacancy in the membership of the IRG;
  - (b) any defect in the appointment of any member of the IRG.
- (2) But that does not alter the requirement under paragraph 6(1) as to quorum.

#### *Functions of the person chairing the IRG*

- 8 (1) Any functions conferred on the person chairing the IRG are to be treated as functions of the IRG exercisable by that person acting on behalf of, and in the name of, the IRG.
- (2) The person chairing the IRG may authorise any other member of the IRG to do any act which the person chairing it may do.
- (3) But no authorisation under sub-paragraph (2) may be given in relation to any function under section 61 (2), (3), (5) or (6)(a).
- (4) An authorisation under sub-paragraph (2) may be given generally or specially.

#### *Accounts*

- 9 (1) The IRG must –
  - (a) keep proper accounts and proper records in relation to the accounts; and
  - (b) prepare a statement of accounts in respect of each financial year.
- (2) Each statement of accounts must contain such information and must be in such form as the First Minister and deputy First Minister acting jointly may determine.
- (3) The first financial year of the IRG is the period that –
  - (a) begins with the specified day, and
  - (b) ends with the following 31 March.
- (4) After that, the financial year of the IRG is each period of 12 months ending with 31 March.

*Audit*

- 10 (1) The IRG must submit each statement of accounts to the First Minister and deputy First Minister within such period after the end of the financial year to which the accounts relate as the First Minister and deputy First Minister acting jointly may determine.
- (2) The First Minister and deputy First Minister acting jointly must send copies of each statement of accounts to the Comptroller and Auditor General for Northern Ireland within such further period as the First Minister and deputy First Minister acting jointly may determine.
- (3) The Comptroller and Auditor General for Northern Ireland must –
- (a) examine, certify and report on each statement of accounts received under this paragraph; and
  - (b) give a copy of each such report to the First Minister and deputy First Minister.
- (4) The First Minister and deputy First Minister acting jointly must lay before the Northern Ireland Assembly –
- (a) a copy of each statement of accounts, and
  - (b) a copy of each report given by the Comptroller and Auditor General for Northern Ireland under sub-paragraph (3)(b).
- (5) In this paragraph “statement of accounts” means the statement of accounts prepared in accordance with paragraph 9.

## SCHEDULE 18

Section 64

## PRISONER RELEASE

*Introduction*

- 1 The Northern Ireland (Sentences) Act 1998 is amended as follows.

*Sentences being served in England and Wales or Scotland*

- 2 (1) Section 3 (applications to the Sentence Review Commissioners) is amended in accordance with this paragraph –
- (a) in subsection (2)(a), after “Northern Ireland” insert “, England and Wales, or Scotland,”;
  - (b) in subsection (2)(b), after “Northern Ireland” insert “, England and Wales, or Scotland,”.
- (2) In Schedule 3 (sentences passed outside Northern Ireland), in paragraph 1(1) (eligibility for release), after “Northern Ireland” insert “, England and Wales, or Scotland”.

*Qualifying offences: offences committed between 1968 and 1973*

- 3 (1) Section 3 (applications to the Sentence Review Commissioners) is amended in accordance with this paragraph.

- (2) After subsection (6) insert –
- “(6A) A qualifying offence is an offence to which subsection (7) or (7A) applies.”
- (3) In subsection (7) –
- (a) for “A qualifying offence is” substitute “This subsection applies to”;
- (b) after “committed” insert “on or after 8 August 1973 and”.
- (4) After subsection (7) insert –
- “(7A) This subsection applies to an offence which –
- (a) was committed on or after 1 January 1968 and before 8 August 1973,
- (b) was committed in connection with terrorism and the affairs of Northern Ireland, and
- (c) is certified by the Director of the Historical Investigations Unit as an offence which, if had been committed on 8 August 1973, would have been a scheduled offence within the meaning of the Northern Ireland (Emergency Provisions) Act 1973.
- (7B) If a person who makes an application under this section in relation to a sentence for an offence requests the Director of the Historical Investigations Unit to provide a certificate under subsection (7A)(c) in relation to that offence, the Director must as soon as reasonably practicable –
- (a) grant the certificate, or
- (b) refuse the request and notify the person who made the request of the refusal and the reasons for it.
- (7C) In deciding whether an offence would have been a scheduled offence the Director of the Historical Investigations Unit must ignore the possibility of a certificate by the Attorney General for Northern Ireland that the offence was not to be treated as a scheduled offence.”

*Offences equivalent to qualifying offences: offences committed between 1968 and 1973*

- 4 (1) In Schedule 3 (sentences passed outside Northern Ireland), paragraph 2 (equivalent offences) is amended in accordance with this paragraph.
- (2) Before sub-paragraph (1) insert –
- “(A1) An offence is equivalent to a qualifying offence if sub-paragraph (1) or (1A) applies to it.”
- (3) In sub-paragraph (1) –
- (a) for “An offence is equivalent to a qualifying offence if it” substitute “This sub-paragraph applies to an offence which –”;
- (b) in paragraph (a), after “committed” insert “on or after 8 August 1973 and”;
- (c) in paragraph (c), for “been” substitute “corresponded to”.
- (4) After sub-paragraph (1) –
- “(1A) This sub-paragraph applies to an offence which –

- (a) was committed on or after 1 January 1968 and before 8 August 1973,
- (b) was committed in connection with terrorism and the affairs of Northern Ireland, and
- (c) is certified by the appropriate law officer as an offence which, if it had been committed in Northern Ireland on 8 August 1973, would have been a scheduled offence within the meaning of the Northern Ireland (Emergency Provisions) Act 1973.”

(5) In sub-paragraph (2), after “sub-paragraph (1)(c)” insert “or (1A)(c)”.

#### *Accelerated release*

5 (1) In section 10 (accelerated release), after subsection (1) insert –

“(1A) This section does not apply to a prisoner granted a declaration in relation to a sentence if section 10A or 10B applies to the prisoner in relation to that sentence.”

(2) After section 10 insert –

#### **“10A Accelerated release: 2 years already served for 1968-73 offence**

- (1) This section applies if –
  - (a) a prisoner is granted a declaration in relation to a sentence,
  - (b) the prisoner would not have been granted the declaration if the 2018 Act amendments had not been made,
  - (c) the prisoner’s sentence was passed before the day on which this section comes into force,
  - (d) on that day the prisoner has already served at least two years of that sentence, and
  - (e) the day on which the prisoner has the right to be released under section 4 or 6 (so far as that sentence is concerned) falls after the day on which this section comes into force.
- (2) The prisoner has a right to be released under the section concerned (so far as that sentence is concerned) on the day on which this section comes into force; but (as the right does not become exercisable until the declaration is granted) the right is complied with as long as the prisoner is released by the end of the day after the day of the declaration.
- (3) But if the day specified in subsection (2) for the prisoner’s release is a listed day (within the meaning of section 4(3)), he or she has the right to be released on the next non-listed day.

#### **10B Accelerated release: other sentence for 1968-73 offence**

- (1) This section applies if –
  - (a) a prisoner is granted a declaration in relation to a sentence (whether passed before or after the day on which this section comes into force),
  - (b) the prisoner would not have been granted the declaration if the 2018 Act amendments had not been made, and



- (c) the day on which the prisoner has a right to be released under section 4 or 6 (so far as that sentence is concerned) falls after the accelerated release day.
- (2) This section does not apply to a prisoner granted a declaration in relation to a sentence if section 10A applies to the prisoner in relation to the sentence.
- (3) The prisoner has a right to be released under the section concerned (so far as that sentence is concerned) on the accelerated release day.
- (4) The accelerated release day is the day on which the prisoner has served two years of that sentence.
- (5) If the prisoner would have a right to be released on or by the end of a listed day (within the meaning of section 4(3)) he or she has a right to be released on or by the end of the next non-listed day.

#### **10C Sections 10A and 10B: supplementary provision**

- (1) Where section 10A or 10B applies to a sentence which is reduced in accordance with section 26 of the Treatment of Offenders Act (Northern Ireland) 1968, the period of the sentence which the prisoner has served is to be calculated for the purposes of section 10A or 10B by including the relevant period under section 26 of the 1968 Act.
- (2) Nothing in section 10A or 10B shall permit the release of a prisoner following a declaration under section 3(1) at any time when an application under section 8(1) for revocation of the declaration has yet to be finally determined.
- (3) In sections 10A and 10B “2018 Act amendments” means the amendments made to this Act by Schedule 18 to the Northern Ireland (Stormont House Agreement) Act 2018.
- (4) The Secretary of State may by order amend –
  - (a) section 10A(2);
  - (b) section 10B(4);
  - (c) subsections (1) and (2) of this section.”
- (3) In section 16 (power to suspend and revive), in subsection (3), after “section 10” insert “, 10A or 10B”.
- (4) In section 19 (orders and rules), in subsections (2), (3) and (4), after “10(8)” insert “or 10C(4)”.

#### *Interpretation of the 1998 Act*

- 6 (1) In section 12 (interpretation: prisoners and sentences), after subsection (5) insert –
  - “(5A) Two or more consecutive sentences being served by a prisoner shall be treated as a single sentence if they were passed on the same occasion and each –
    - (a) is for at least five years, and
    - (b) was passed in England and Wales for an offence equivalent to a qualifying offence (within the meaning of Schedule 3).

- (5B) Two or more consecutive sentences being served by a prisoner shall be treated as a single sentence if they were passed on the same occasion and each—
- (a) is for at least five years, and
  - (b) was passed in Scotland for an offence equivalent to a qualifying offence (within the meaning of Schedule 3)."
- 7 (1) Section 13 (interpretation: terrorism) is amended in accordance with this paragraph.
- (2) In the heading, after “terrorism” insert “and its prevention”.
- (3) The existing provision becomes subsection (1) of the section.
- (4) After subsection (1) insert—
- “(2) A reference in this Act to an offence committed in connection with terrorism and the affairs of Northern Ireland includes a reference to an offence committed in connection with, or arising from, preventing, investigating or otherwise dealing with the consequences of, terrorism connected with the affairs of Northern Ireland.”

*Extent*

- 8 In section 21 (extent)—
- (a) omit subsection (1);
  - (b) for subsection (3) substitute—
- “(3) Subject to that, this Act extends to Northern Ireland, England and Wales and Scotland.”

## SCHEDULE 19

Section 65

## AMENDMENTS

*Data Protection Act 1998*

- 1 In section 56(6) of the Data Protection Act 1998 (prohibition of requirement as to production of certain records), in paragraph 1 in the first column of the table, after paragraph (c) insert—
- “(ca) the Historical Investigations Unit.”

*Northern Ireland Act 1998*

- 2 (1) The Northern Ireland Act 1998 is amended in accordance with this paragraph.
- (2) In section 75(3) (statutory equality duty on public authorities), after paragraph (b) insert—
- “(ca) the Historical Investigations Unit;
  - (cb) the Implementation and Reconciliation Group;”.
- (3) In section 76(7) (discrimination by public authorities), after paragraph (c)

insert –

- “(ca) the Historical Investigations Unit;
- “(cb) the Implementation and Reconciliation Group;”.

*Official Secrets Act 1989 (Prescription) Order 1990*

- 3 (1) In Schedule 1 to the Official Secrets Act 1989 (Prescription) Order 1990 (persons prescribed for the purposes of section 12(1)(f) of the Official Secrets Act 1989), at the end insert –

“The Historical Investigations Unit      The members of the Historical Investigations Unit and Historical Investigations Unit officers”

- (2) For the purposes of the Official Secrets Act 1989, that entry in Schedule 1 to the 1990 Order is to be taken to have been prescribed by order made by the Secretary of State under section 12(1) of that Act.

*Freedom of Information Act 2000*

- 4 (1) Schedule 1 to the Freedom of Information Act 2000 (public authorities) is amended in accordance with this paragraph.

- (2) In Part 5 of the Schedule (police), after paragraph 61 insert –

“61A    The Historical Investigations Unit.”

- (3) In Part 7 of the Schedule (other public bodies and offices: Northern Ireland), at the appropriate place insert –

“The Implementation and Reconciliation Group.”

*Regulation of Investigatory Powers Act 2000*

- 5 (1) The Regulation of Investigatory Powers Act 2000 is amended in accordance with this paragraph.

- (2) In section 19 (offence for unauthorised disclosures), in subsection (2), after paragraph (e) insert –

“(ea) members of the Historical Investigations Unit, Historical Investigations Unit officers and every other person employed by or for the purposes of the Historical Investigations Unit;”.

- (3) In section 25 (interpretation of Chapter 2 of Part 1), in subsection (1), in the definition of “relevant public authority”, after paragraph (b) insert –

“(ba) the Historical Investigations Unit;”.

- (4) In section 65 (the Tribunal), in subsection (6), after paragraph (ca) insert –

“(cb) the Historical Investigations Unit;”.

*Justice (Northern Ireland) Act 2002*

- 6 In section 35 of the Justice (Northern Ireland) Act 2002 (information for Director of Public Prosecutions), after subsection (5) insert –

“(6) The Director may not make a request under subsection (5) for –

- (a) information about a matter that may involve an offence arising from the death of a person, or
- (b) information appearing to be necessary for the exercise of the Director’s functions in relation to the death of a person, if the Director is able to refer, or has referred, the death to the HIU under paragraph 1 of Schedule 6 to the Northern Ireland (Stormont House Agreement) Act 2018.”

*Regulation of Investigatory Powers (Communications Data) Order 2010*

- 7 (1) In Part 1 of Schedule 2 to the Regulation of Investigatory Powers (Communications Data) Order 2010 (individuals in additional relevant public authorities that may acquire any communications data within section 21(4)), after the entry relating to the Independent Police Complaints Commission, insert –

“Historical Investigations Unit	The Director	–	Section 22(2)(b)”.
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- (2) For the purposes of the Regulation of Investigatory Powers Act 2000, that entry in Part 1 of Schedule 2 to the 2010 Order is to be taken to have been prescribed by order made by the Secretary of State under section 25(2) of that Act.

*Investigatory Powers Act 2016*

- 8 (1) The Investigatory Powers Act 2016 is amended in accordance with this paragraph.
- (2) In section 58 (section 57: meaning of excepted disclosure), in subsection (2), after paragraph (c) insert –
- “(ca) a disclosure made to the Historical Investigations Unit for the purpose of facilitating the carrying out of any of the Historical Investigation Unit’s functions;”.
- (3) In Schedule 4 (relevant public authorities and designated senior officers etc), in Part 1 (table of authorities and officers), after the entry for the National Crime Agency insert –

“Historical Investigations Unit	The Director	All	(b)”.
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