

# NORTHERN IRELAND (STORMONT HOUSE AGREEMENT) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Northern Ireland (Stormont House Agreement) Bill as introduced in the House of Commons on [        ].

- These Explanatory Notes have been prepared by the Northern Ireland Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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## Overview of the Bill

- 1 The measures in the Northern Ireland (Stormont House Agreement) Bill give effect to commitments made in the Stormont House Agreement to establish several new institutions to deal with the legacy of the Troubles in Northern Ireland.

## Policy background

- 2 The Stormont House Agreement<sup>1</sup> (the Agreement) was reached on 23 December 2014, following 11 weeks of talks between the UK Government (the Government), the five largest political parties in the Northern Ireland Assembly, and the Government of Ireland on matters for which they have responsibility, in accordance with the three-stranded approach reflected in the 1998 Belfast Agreement.
- 3 The Agreement addressed a number of challenges facing Northern Ireland, including welfare reform, fiscal sustainability, measures to deal with the legacy of the Troubles, arrangements to examine issues such as flags, parades, cultural identity and tradition, and improvements to the working of devolution. Some of the commitments in the Agreement were given legislative effect through the Northern Ireland (Welfare Reform) Act 2015 and Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016.
- 4 The Northern Ireland (Stormont House Agreement) Bill is intended to deliver the parts of the Agreement requiring legislation which address the legacy of the past by providing for the establishment of:
  - the Historical Investigations Unit (HIU) – an independent institution that will take forward outstanding investigations into Troubles-related deaths;
  - the Independent Commission on Information Retrieval (ICIR) – an independent institution established by international agreement between the UK and Irish Governments that will enable victims and survivors of the Troubles to seek and privately receive information about the Troubles-related death of their next-of-kin;
  - an oral history archive (OHA) – to enable people from all backgrounds to share experiences and narratives related to the Troubles and to draw together existing oral history projects;
  - the Implementation and Reconciliation Group (IRG) - to promote reconciliation and commission a report on patterns and themes from independent academic experts.
- 5 The Agreement states that "an approach to the past is necessary which respects the following principles: promoting reconciliation; upholding the rule of law; acknowledging and addressing the suffering of victims and survivors; facilitating the pursuit of justice and information recovery; is human rights compliant; and is balanced, proportionate, transparent, fair and equitable". The Bill measures have therefore been developed with these core principles and aims in mind.
- 6 In 2015, the Government and the political parties agreed that these provisions should be

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<sup>1</sup> Full text of the Agreement is available here: <https://www.gov.uk/government/publications/the-stormont-house-agreement>

taken forward in a single Bill before Parliament, covering both devolved and non-devolved matters.

- 7 These measures were the subject of further discussions in the cross-party talks that led to the publication of "A Fresh Start: the Stormont Agreement and Implementation Plan"<sup>2</sup> in November 2015. Further discussions have taken place with the political parties since that time, most recently in January and February 2018. Following these extensive political discussions, the Government believes that it is appropriate to publish the Bill as part of a public consultation on addressing the past in Northern Ireland.

## Legal background

- 8 Many of the provisions in the Bill are enabling provisions. They provide for the functions of the legacy institutions and how they will be structured in order to deliver those functions. As these institutions are newly established through the Bill, much of the legislation is new. However, the following existing primary legislation is relevant:

- Public Records Act (Northern Ireland) 1923
- International Organisations Act 1968
- Official Secrets Act 1989 (Prescription) Order 1990
- Data Protection Act 1998
- Northern Ireland Act 1998
- Northern Ireland (Sentences) Act 1998
- Human Rights Act 1998
- Police (Northern Ireland) Act 1998
- Police (Northern Ireland) Act 2000
- Freedom of Information Act 2000
- Regulation of Investigatory Powers Act 2000
- Justice (Northern Ireland) Act 2002
- Investigatory Powers Act 2016

- 9 The commentary on the Bill clauses and schedules explains any additional relevant legal background.

## Territorial extent and application

- 10 The majority of the provisions in the Bill extend to the whole of the UK, with the exception of Part 4 (the Oral History Archive) and paragraphs 8 and 9 of Schedule 7 (offences in relation to the HIU), which extend to Northern Ireland only. However, the application of a

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<sup>2</sup> "A Fresh Start: the Stormont Agreement and Implementation Plan" can be found here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/479116/A\\_Fresh\\_Start\\_-\\_The\\_Stormont\\_Agreement\\_and\\_Implementation\\_Plan\\_-\\_Final\\_Version\\_20\\_Nov\\_2015\\_for\\_PDF.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf)

Bill (which is about where a Bill produces a practical effect) can be narrower than its extent, and all of the measures will primarily be applicable in Northern Ireland only.

- 11 The Bill covers matters which are devolved as well as matters that are reserved or excepted under the Northern Ireland Act 1998. In line with the convention that the UK Parliament will not normally legislate on a devolved matter without the consent of the devolved legislature, the Government is seeking a Legislative Consent Motion in respect of the transferred matters.
- 12 In the case of the Independent Commission on Information Retrieval, which will be an international body, corresponding legislation will be required to be enacted by the Houses of the Oireachtas to ensure it can operate in Ireland. The Government of Ireland has committed to taking this forward.

## Commentary on provisions of Bill

- 13 Note that the following provisions have been ordered in a way that allows the commentary of the schedule to follow on from the commentary on the clause to which it relates, in order to assist the reader.

### Part 1: Introductory provisions

#### Clause 1: The "general principles"

- 14 The Stormont House Agreement states that the approach to dealing with the legacy of the past should respect a number of core principles. Clause 1 sets out these principles, which will inform the way in which each of the new legacy institutions in the Bill operates, including the need to be balanced, proportionate, transparent, fair and equitable.
- 15 Each of the new institutions has a duty to exercise its functions in a manner consistent with the general principles under clauses 7, 43, 52 and 60 respectively.

### Part 2: The Historical Investigations Unit

#### Clause 2: Establishment of the Historical Investigations Unit and Schedule 1

- 16 Clause 2 establishes a new body corporate to be known as the Historical Investigations Unit, or the "HIU". The HIU will be independent and, as such, this clause makes clear that it does not hold any status, privilege or immunity of the Crown.
- 17 Schedule 1 sets out the powers of the HIU and the way in which the HIU must conduct its proceedings. Most of these provisions are self-explanatory, but some clarification is provided below.
- 18 As a statutory body, the HIU will only have the power to do that which statute says it can do. The broad principle in paragraph 1(1) of Schedule 1 is that the HIU may do anything that it thinks necessary and expedient in connection with the exercise of its functions. That broad principle is particularised, and in some cases restricted, in the following paragraphs. For example, the HIU can enter into contracts, and acquire and dispose of property, but it cannot borrow money, as the HIU's funding will come from public funds.
- 19 The HIU is responsible for the payment of remuneration, pensions, allowances, gratuities or compensation to, or in respect of, the Director, other HIU members and HIU officers. "HIU officer" is defined in clause 39 as persons employed by or seconded to the HIU, and the Director of the HIU in his or her capacity as an HIU officer. For example, remuneration

might be paid directly to a person employed. Alternatively, in the case of secondments, arrangements might provide for payments to be made to the body from which the officer is seconded. All such payments come out of the funding put at the disposal of the HIU under clause 4.

- 20 Of particular note in Schedule 1 are the provisions (paragraph 2(4) and (5) and paragraph 3(7) and (8)) which allow persons who are not members of the HIU to attend HIU meetings or committee meetings, with their reasonable expenses for attendance reimbursed. For example, the HIU may want an external auditor to attend one or more of its meetings to provide advice on proper audit procedures.
- 21 Similarly, as long as the HIU is satisfied that there is a special need to do so and the person has relevant specialist expertise (such as accountancy or legal expertise), the HIU can appoint individuals who are not members of the HIU to chair or be a member of a committee or a sub-committee which deals with complaints, financial matters or administrative matters, and may pay remuneration and allowances to such a person. For example, the HIU may decide to appoint a person with accountancy expertise as a member of an audit and risk committee, or the HIU may decide to appoint a person with judicial or significant legal experience to chair a complaints or disciplinary committee.

### Clause 3: HIU members and officers and Schedule 2

- 22 This clause provides for the core membership of the HIU. The HIU may employ persons directly or may make arrangements to take persons on secondment from other bodies, including police forces. In so doing, it must ensure a range of relevant experience by employing persons who have experience of conducting criminal investigations both within and outside Northern Ireland.
- 23 Parts 1 and 2 of Schedule 2 provide for the appointment, removal and terms and conditions of the Director and the other members of the HIU. The appointment and removal of the Director and the two non-executive members will be by the Northern Ireland Minister of Justice, who must act on the recommendation of an appointments panel comprised of the Attorney General for Northern Ireland, a Commissioner for Victims and Survivors, the head of the Northern Ireland Civil Service and a person appointed to the panel by the Minister of Justice who has experience of managing major criminal investigations. The two executive members will be appointed by the Director and will be both members and officers of the HIU. This is consistent with guidance issued by the Department of Finance in Northern Ireland, which is available at <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/daodfp0613att.pdf>.
- 24 Part 2 also contains technical provisions about the status of functions conferred on the Director, in light of the HIU's corporate structure. Functions which are conferred specifically on the Director are to be treated, in legal terms, as functions of the HIU which are exercised by the Director on its behalf. It also enables the Director to delegate most, but not all, of those functions to HIU members or officers. The business of the HIU can continue even if for some reason there is no Director in post, or the Director is unable (temporarily or otherwise) to carry out the function. In such circumstances, the HIU can (corporately) exercise functions on the Director's behalf, and may delegate that exercise to one of the members, a HIU officer, or a committee or sub-committee.
- 25 Part 2 makes clear that persons holding political office may not be a member of the HIU (and Part 3 precludes the same categories of persons from being HIU officers). Additionally, the Minister of Justice may require the Director and non-executive members, or persons being considered for appointment as such, to provide information to the HIU regarding any potential conflict of interest or which could affect the ability of the person to be fair and

impartial. The Director may require persons being considered for appointment as executive members to provide such information.

- 26 Similarly, any person applying to be an HIU member or officer may be required to declare any past conviction, irrespective of whether the conviction is 'spent'. This is consistent with the position in relation to the Director of Public Prosecutions for Northern Ireland and any employment or other work in his office; constables in the Police Service of Northern Ireland (PSNI), police trainees, police cadets, police support staff and persons employed to assist constables; and any office or employment or other work in the Serious Fraud Office, the National Crime Agency, Her Majesty's Revenue and Customs or the Office of the Police Ombudsman for Northern Ireland (the Ombudsman).
- 27 Part 3 makes further provision about the employment or secondment of HIU officers.
- 28 The effect of a secondment is that the secondee remains an employee of their original employer. However, for the period of their secondment, they would become an HIU officer and would be under the direction and control of the Director of the HIU in the same way as other employed HIU officers. Specific provision needs to be made for secondments from the PSNI and police forces in England and Wales to ensure that such persons do not lose their entitlements to pensions and benefits when they are seconded. If a person who is seconded to the HIU is a constable in the PSNI, that office of a constable is suspended for the period of secondment to the HIU, and revived when the secondment ends and the person returns to service as a constable in the PSNI (unless the person ceases to hold the office of constable in the interim). However, secondment does not affect a PSNI officer's status for the purpose of membership of the Police Association, and the restrictions on membership of a trade union in the person's capacity as a PSNI officer. If a person is a constable outside of Northern Ireland (for example, in Scotland), the person cannot exercise the powers and privileges of a constable in Northern Ireland. In either case, this means that the person does not have the powers and privileges of a constable in Northern Ireland during secondment to the HIU, unless the person is specifically designated with those powers by the HIU Director (see clause 24).
- 29 The remaining provisions are self-explanatory.

#### Clause 4: Funding

- 30 Clause 4 sets out the funding model for the HIU.

#### Clause 5: Deaths within the HIU's remit and Schedule 3

- 31 Clause 5 and Schedule 3 set out the deaths which fall within the HIU's remit. There are three categories of deaths which will be within the HIU's remit:
- where the Chief Constable of the PSNI has certified that the death was part of the caseload of the PSNI's Historical Enquiries Team (HET) before 23 December 2014 and that death requires further investigation;
  - where the Police Ombudsman has certified that the death was part of the caseload of the Ombudsman's Historical Investigations Directorate (HID) before the date on which the HIU provisions in the Bill are commenced, and the death requires further investigation; and
  - where the death was wholly caused by physical illness or injury that was the direct result of an act of violence or force that has the required connection with Northern Ireland and was carried out in the period 11 April 1998 - 31 March

2004. The "required connection with Northern Ireland" is defined at clause 5(6).
- 32 Clause 5 goes on to place a duty on the HIU to publish a list of all deaths within its remit and specifies information that the HIU must include as part of that list.
- 33 Schedule 3 clarifies that a death on the HET or HID case list requires further investigation if
- the investigation is incomplete, because it had not begun (Condition A) or had not been completed by the relevant date (Condition B), or
  - the investigation had been completed by the relevant date but one of Ground A or Ground B (relating to new evidence) for further investigation apply, or Grounds C or D apply in HET cases, (Condition C), or
  - the Director of Public Prosecutions for Northern Ireland refers a case to the HIU in the way described in Schedule 6 (Condition D).
- 34 Paragraph 6 of Schedule 3 explains the conditions that must be satisfied for completed HET or HID cases to be investigated by the HIU. These are referred to as Ground A and Ground B. Paragraph 7 of Schedule 3 explains the conditions that must be satisfied for completed HET cases to be investigated by the HIU. These are referred to as Ground C and Ground D.
- 35 Ground A is that there is new evidence relating to the death, which is not evidence of non-criminal police misconduct and the HIU has reasonable grounds for believing the new evidence is capable of leading to the identification or prosecution of a person involved in the death. In forming such a view, the Director must take account of the credibility of the new evidence. The HIU must also establish a procedure by which families may bring to the attention of the HIU new evidence and the HIU must publish that procedure.
- 36 Ground B applies where the new evidence is of non-criminal police misconduct and the HIU has reasonable grounds for believing that the new evidence is capable of leading to the identification or disciplinary proceedings of a person involved in the death, and the HIU considers that it is appropriate to investigate the police misconduct because of the gravity of the conduct or there are exceptional circumstances. If the new evidence relates to conduct of a police officer which would be a criminal offence if proved, that will fall under Ground A rather than Ground B.
- 37 Paragraph 6 of Schedule 3 also defines what is meant by certain terms used in paragraph 6 including new evidence. Evidence is new evidence if either the individuals carrying out the investigatory process for the original investigating body, or the HIU, did not know of the evidence or knew of it but did not know of the relationship between the evidence and the death. An example might be where the PSNI knew what weapon was used to kill a person, and that an identical weapon was used in another death that it was investigating, but did not make the link between the two deaths because it did not know of the relationship (the new evidence being the relationship). Schedule 6 makes further provision related to the investigatory function of the HIU in relation to new evidence after the HIU has finished its investigation (or if its investigatory function is not exercisable).
- 38 Ground C applies (other than in relation to a case described in paragraph 7(7) of Schedule 3; see paragraph 40 below) where the investigatory process of the HET has been completed and the Chief Constable has reasonable grounds for believing the death was the direct result of the use of force by a person (referred to as P) and, having particular regard to the report of Her Majesty's Inspectorate of Constabulary of July 2013 (see paragraph 7(5)), is satisfied that that conduct by P requires further investigation .

- 39 Ground D applies (other than in relation to a case described in paragraph 7(7) of Schedule 3, see paragraph 40 below) where the investigatory process of the HET has been completed and the Chief Constable has reasonable grounds for suspecting that a person (referred to as P) facilitated an offence or avoidance of justice relating to the death and did so with the intention of achieving an unlawful or improper purpose and either, that by doing so the Chief Constable has reasonable grounds to suspect that P committed a criminal offence, or, that the Chief Constable considers the HIU should investigate because of the gravity of P's conduct or there are exceptional circumstances. The Chief Constable must also be satisfied, having particular regard to the report of Her Majesty's Inspectorate of Constabulary of July 2013 (see paragraph 7(5)), that P's conduct requires further investigation.
- 40 Grounds C or D will not apply when the death was part of the HID (as well as part of the HET) caseload, P's conduct has already been investigated and the HID process has been certified as complete.

#### Clause 6: Functions of the HIU and Schedule 4

- 41 This clause describes the main functions of the HIU. These are (a) subject to the provisions of Part 2 of the Bill, to investigate deaths within its remit, (b) to prepare family reports in respect of such deaths; and (c) to provide support and other assistance to the families of those who died.
- 42 Where the HIU investigates criminal offences, the HIU will produce a criminal investigation report (clause 13) and where it investigates police misconduct it will produce a misconduct investigation report (clause 14). These two reports will be combined into a single investigation report (clause 16) which will form the basis for the production of a family report in respect of each death (clause 17). The HIU may decide to combine investigation reports or family reports for linked deaths. Clause 8 and 9 sets out how the investigation into the death must be conducted.
- 43 This clause requires the HIU Director to issue a statement setting out how the HIU will exercise its investigatory function. The statement must cover
- a. how the HIU will ensure its investigations are compliant with its human rights obligations, particularly its Article 2 obligations under the Human Rights Act 1998. This must include a statement about how those obligations will be complied with in connection with the investigation of deaths in accordance with clause 10 (which is about avoiding conflicts of interest). Such a statement might set out how the HIU will ensure that the persons conducting an investigation into a death are practically independent from those implicated in the events;
  - b. how the HIU will ensure that the order in which cases will be taken will be in accordance with clause 8 (which requires deaths within the HIU's remit to be considered chronologically by the HIU unless there are exceptional circumstances and the HIU would perform its functions more effectively by investigating deaths in a different order).
- 44 Schedule 4 makes transitional provision for deaths which fall within the remit of the HIU but in respect of which, immediately before the HIU commences, an investigation was being conducted by the PSNI (or another police force) or the Ombudsman, but their investigation is at such an advanced stage that it would be inappropriate for the HIU to begin an investigation. In these cases, the HIU Director and the Chief Constable or the Ombudsman can come to an agreement that the PSNI or Ombudsman respectively will continue the investigation for an agreed period, having regard to the need for the death to be investigated with reasonable expedition. Such an agreement might be made, for

example, if at an advanced stage of the investigation the PSNI is in the process of interviewing suspects in respect of an offence and the progress of the investigation would be substantially delayed if the HIU were to take it over.

- 45 At the end of the transitional period, the case would move to the HIU and the HIU will prepare a family report, unless there are further investigative steps to be taken. Further investigative steps can only be taken by the HIU if one of two conditions is met. Condition A applies where the Director has reasonable grounds for believing that a crime relating to the death has been committed and that there are reasonable investigative steps the HIU could take which are capable of leading to the person who committed that offence being identified or prosecuted. Condition B applies where the Director decides there are reasonable investigative steps the HIU could take which are capable of identifying a person whose conduct constitutes non-criminal police misconduct relating to a death, or disciplinary proceedings against such a person, and it is appropriate to investigate because of the gravity of the misconduct or there are exceptional circumstances.

### Clause 7: Exercise of functions by the HIU

- 46 This clause sets out the general manner in which the HIU must exercise its functions and places it under duties not to do anything which might: prejudice the national security interests of the UK; put at risk the life or safety of any person; or have a prejudicial effect on criminal or police disciplinary proceedings. These requirements apply to all of the HIU's functions, including both its investigatory and support and assistance functions. Like the other institutions for dealing with the past, the HIU must also exercise its functions in a matter that is consistent with the general principles in clause 1.

### Clause 8: Exercise of the investigatory function and Schedules 5 and 6

- 47 This clause sets out how the HIU must exercise its investigatory function. Subject in particular to clause 9, as part of its general investigation, the HIU must investigate any criminal offences relating to the death and also any non-criminal police misconduct relating to a death, where the HIU thinks that it is appropriate to do so because of the gravity of the conduct or due to exceptional circumstances. "Non-criminal police misconduct" means misconduct related to a death by a member of the PSNI or the PSNI Reserve, or their predecessors the RUC or the RUC Reserve, which does not constitute a criminal offence (as defined in clause 39.)
- 48 The fact the investigatory function includes the investigation of criminal offences and non-criminal police misconduct does not mean that the HIU is required to use its resources to investigate criminal offences or misconduct which are only remotely connected with a death. "Criminal offence relating to a death" is defined as a criminal offence that is closely related to a death, including criminal offences comprised in a course of conduct leading to, or following from, the death, and criminal offences relating to any investigation, arrest or prosecution which concerns the death. "Non-criminal police misconduct relating to a death" is similarly defined. (For both definitions, see clause 39).
- 49 This clause establishes that deaths must usually be investigated in chronological order, unless the Director is satisfied that there are exceptional circumstances and that the HIU would perform its functions more effectively by investigating in a different order. This might occur where, for example, two deaths occurring a number of years apart are closely linked, so it would be most effective and appropriate in operational terms to investigate them at the same time.
- 50 Schedule 5 modifies the HIU's functions in respect of cases within its remit that are certified as being "substantially complete". There are three types of case which are "substantially

complete”: incomplete HET cases in respect of which the Chief Constable certifies there are no further investigative steps for the PSNI to take; HID cases where the investigation is complete but where no statement by the Ombudsman is to be issued or has been issued; the deaths that are within the remit of the HIU which occurred in the period beginning with 11 April 1998 and ending with 31 March 2004. An example of a case which the Chief Constable might certify as substantially complete might be if a full investigation has taken place, but no report was provided to the family of the deceased by the HET. In substantially complete cases, the investigatory function of the HIU can only be exercised if either Condition A or Condition B is met. Condition A applies where the Director has reasonable grounds for believing that a criminal offence relating to the death has been committed and there are reasonable investigative steps that could be taken capable of leading to the identification or prosecution of a person for that offence. Condition B applies where the Director decides there are reasonable investigative steps that could be taken capable of leading to the identification of a person whose conduct constitutes non-criminal police misconduct relating to the death or disciplinary proceedings against such a person and it is appropriate to investigate due to the gravity of the misconduct or exceptional circumstances. If neither condition applies, then the HIU must simply establish whether there is any additional information available, and proceed to prepare a family report in respect of the death.

- 51 Schedule 6 allows for the Director of Public Prosecutions for Northern Ireland (the DPP) to refer relevant deaths (defined in paragraph 1(6) of Schedule 6) to the HIU for investigation. The schedule sets out that in order for the DPP to make such a referral, they must be aware of new evidence relating to the death and must consider that the new evidence would be capable of leading to the identification of a person involved in the death or prosecution of a person for a criminal offence relating to the death. This provision also establishes that the DPP must exercise this power of referral in accordance with the general principles set out in clause 1. Schedule 6 also makes further provision related to the identification of new evidence and the procedure for bringing new evidence to the attention of the HIU.

### Clause 9: Operational control by Director

- 52 Subject to the provisions described above about the order in which deaths must be investigated, the Director of the HIU has operational control over investigations, including the power to decide the extent to which an investigation is needed and the manner in which an investigation is conducted. Clause 9 makes further provision about the exercise of that operational control.
- 53 When exercising operational control, the Director must have regard to the aim of the HIU completing its investigations within 5 years. The investigatory function of the HIU is only exercisable if the circumstances specified as conditions A, B or C are met. If there is not sufficient information available to the HIU to form a view on whether conditions B or C exist, the investigatory function can be exercised in order to seek information to enable that view to be formed. If the investigatory function is not exercisable, the HIU must establish whether there is any additional information available, and proceed to prepare a family report in respect of the death (clause 9(14)). If the investigatory function is exercisable, when exercising operational control, the Director must also take into account any previous investigation that has been carried out into a death and must not duplicate any aspect of that previous investigation unless, in the view of the Director, that duplication is necessary.
- 54 Condition A is where there is new evidence relating to the death that the Director has reasonable grounds for believing is capable of leading to the identification of a person involved in the death (see clause 9(10) for the meaning of "a person involved in the death") or punishment of a person for a criminal offence, or non-criminal police misconduct,

relating to the death (see paragraph 48 above for an explanation of the meaning of those terms). In forming a view on whether new evidence is capable of leading to the identification, prosecution or disciplinary proceedings, the Director must take account of the credibility of the new evidence.

- 55 Condition B is where 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 the HIU could take which are capable of leading to the person who committed that offence being identified or prosecuted.
- 56 Condition C is where the Director decides that there are reasonable investigative steps the HIU could take which are capable of leading to the identification of a person whose conduct was non-criminal police misconduct in relation to the death, or disciplinary proceedings against a person for such misconduct; and that the Director also considers that it is appropriate to investigate the misconduct because of its gravity or exceptional circumstances.
- 57 In relation to Conditions A, B and C, the Director is not prevented from forming the view that, respectively, the new evidence or reasonable investigative steps, are capable of leading to the identification or punishment of a person involved in the death by factors such as that person's health, domicile, or the period of time that has elapsed. For example, if there is new evidence but the person suspected of committing an offence in relation to the death has died, without this provision the HIU would not be able to investigate the new evidence before compiling the family report as no prosecution or disciplinary proceedings would be possible.

#### Clause 10: Avoiding conflicts of interest

- 58 This clause relates to avoiding the risk of conflicts of interest arising. It provides that the Director may require an HIU officer or prospective officer to provide information regarding any potential conflict of interest which could affect their ability to be fair and impartial.
- 59 The Director must take steps to ensure that no one investigating a death has, or could reasonably be perceived to have, a conflict of interest in relation to that particular investigation. Further, the Director must organise teams of HIU officers such that one team is comprised of officers who do not have a (or have no perceived) work-related conflict of interest in relation to any death within the HIU's remit resulting from a previous employment.
- 60 The Director must consult the family of the deceased in allocating the investigation to a particular team and have regard to their views.

#### Clause 11: Statement about the exercise of the investigatory function

- 61 This clause requires the HIU to have regard to the statement issued by the Director (under clause 6(3)). The Director must keep the statement under review and revise it if appropriate. Before issuing the statement, or revising it significantly, the Director must consult the Northern Ireland Policing Board. The statement must be published.
- 62 The requirement to consult the Policing Board is linked to the Policing Board's specific duty (in Schedule 15) to consider the extent to which the HIU's functions have been exercised in accordance with this statement, and more generally with its human rights obligations.

#### Clause 12: Separate conduct of criminal and police misconduct investigations

- 63 This clause sets out the process to be followed before and during an investigation of a death within the HIU's remit which requires both a criminal investigation and a non-criminal

police misconduct investigation to be carried out.

- 64 The HIU must first form a view as to whether both kinds of investigation are needed before it starts to investigate a death and then keep this question under review throughout its investigation into the death. The criminal investigation must be conducted separately and before the investigation into non-criminal police misconduct, so that the investigations are conducted sequentially. The HIU is required to suspend ongoing police misconduct investigations pending the conclusion of a criminal investigation. The HIU may then proceed with a misconduct investigation once it has finished taking investigative steps in the criminal investigation. This is the case even where the Director of Public Prosecutions is considering charges in relation to criminal offences, subject to the HIU's duty under clause 7 not to do anything in carrying out its function which might have a prejudicial effect on any actual or prospective criminal proceedings.
- 65 The requirement to conduct investigations separately and sequentially does not prevent information obtained during the course of the criminal investigation from being used as part of a subsequent misconduct investigation, unless so using the information would be inconsistent with other legislation, in particular, with section 9 of the Crime (International Co-operation) Act 2003. That section provides that evidence obtained pursuant to a request for mutual legal assistance from outside the UK can only be used for the purpose specified in the original request, unless the government in question gives consent to its use for another purpose.

### Clause 13: Criminal investigation reports

- 66 This clause requires the HIU to produce a criminal investigation report once a criminal investigation into a death (under clause 12) is finished. The HIU is required to provide the DPP with a copy of the criminal investigation report, whether or not the HIU concludes that any criminal offences were committed. The HIU must also give the DPP a statement of those offences (if any).
- 67 The rest of this clause is self-explanatory.

### Clause 14: Police misconduct investigations: procedure and report

- 68 This clause requires the HIU to produce a statement of the procedures that it will follow when investigating alleged non-criminal misconduct of current and former police officers. The HIU must ensure that any such procedures are consistent with existing PSNI and Police Ombudsman procedures, so that there will not be two different sets of procedures, depending on the body investigating the misconduct.
- 69 Current or former police officers under investigation will be able to request a copy of the statement.

### Clause 15: Recommendations regarding police discipline

- 70 This clause sets out the process and actions that the HIU and the disciplinary authority may or must take where there is an investigation into non-criminal misconduct of a member of the PSNI or the PSNI Reserve who is still a serving officer.

### Clause 16: Investigation reports

- 71 This clause is self-explanatory.

### Clause 17: Comprehensive family reports

- 72 This clause relates to reports provided to the family of the deceased in relation to their relative's death ("family reports"). It requires that each family report is as comprehensive as possible, while also being accessible and consistent with the HIU's other duties. It further

requires that each family report must include a statement on whether the HIU investigation complied with its human rights obligations. It sets out the relatives to whom the report must (close family member, as defined in clause 67), or may (other family members) be provided, and the circumstances in which the HIU may issue an interim report.

- 73 Many of the deaths that the HIU will investigate will date back several decades. As such, this clause also requires that the family report take account of the context in which any previous investigation into the death took place.

#### Clause 18: Particular material in family or interim reports

- 74 This clause makes provision for particular material in family and interim reports.
- 75 First, it requires that, where the Secretary of State has determined that material must not be disclosed because it would, or would be likely to, prejudice national security (see schedule 10), the family or interim report must make this clear, including setting out any reasons given by the Secretary of State for preventing the disclosure.
- 76 Second, where information has been received from the Irish authorities referred to in the clause, the family report must include a statement commenting on the co-operation provided by those Irish authorities and whether any of the information was redacted before it was provided.
- 77 Third, where the HIU proposes to issue a report which makes significant criticism of a particular individual who was involved in preventing or investigating an event of which the death forms part, the HIU must notify that individual and should invite the individual to respond. The HIU must then consider any representations that the individual may make (normally) within 30 days and should notify the individual that the time period may be extended where it is satisfied there is good reason. This will provide the HIU with the opportunity to consider further contextual information. The HIU should ensure the report fairly reflects the representations made by the individual which may include amending the draft.

#### Clause 19: Provision of reports to injured persons

- 78 There will be cases where the HIU investigates a death or deaths arising from an incident in which other people were also injured. This clause enables someone who was injured to request a copy of a family or interim report issued to the relatives of the deceased.
- 79 The HIU may decide that it is appropriate to provide a copy of the report to an injured person, having first sought the views of the family of the deceased.
- 80 The HIU may decide to remove some information from the copy of the report to be provided to an injured person to comply with the Data Protection Act 1998 (see clause 27(5)(a)), or where its inclusion would be distressing to the family. For example, the HIU might remove medical information about the deceased which was suitable for provision to the family, but would be distressing if made more widely available.

#### Clause 20: Publication of reports

- 81 Under this clause family reports (and interim reports) can be published by the HIU, but the HIU must give consideration to any representations made by family members or injured persons before deciding whether to publish.
- 82 The HIU may decide to remove some information from the copy for publication to comply with the Data Protection Act 1998 (see clause 27(5)(a)), or if publication would be distressing to the family or someone who was injured in the incident.

## Clause 21: Appeals

- 83 This clause provides for a right of appeal (without leave being necessary) to the High Court in Northern Ireland where either a close family member of the deceased who receives a copy of the family report or interim report or the HIU Director wishes to challenge the decision of the Secretary of State not to permit disclosure of information (under schedule 10) which would or would be likely to prejudice national security. If there is no close family of the deceased who receives a copy of the family report, then the right of appeal can be exercised by any other family member who receives a copy of the family report or interim report.
- 84 The clause makes provision about the procedure for such an appeal and specifies that the court's function would be to review the Secretary of State's decision applying the principles applicable for judicial review. This would include consideration of whether the decision was compatible with human rights legislation. If the court quashes the Secretary of State's decision, it must direct the Secretary of State to retake the decision within (generally) 60 days, but the court may specify a longer period. If the court does not quash the decision, it must dismiss the appeal.
- 85 There is an onward right of appeal, with leave, by any party to the appeal. Leave to appeal will only be given if there is an important point of principle or practice or some other compelling reason for the appeal to be heard. There is the possibility of final appeal to the Supreme Court. If the High Court quashes the Secretary of State's decision and the Secretary of State appeals, the HIU may not release the family report pending the conclusion of the appeal process and the period for remaking the decision following the conclusion of the appeal. If the Secretary of State does not appeal and remakes the decision, the HIU may not release the family report during the period for remaking the decision. Once the Secretary of State has notified the HIU of the Secretary of State's remade decision, the HIU must produce a new family report (or interim report) in accordance with clause 18(4).

## Clause 22: Support and assistance to family members

- 86 This clause provides for specific kinds of support and assistance that the HIU must offer to family members, including ensuring that an HIU officer is available to support the family through receiving a report, and for a general duty to provide other support and assistance.
- 87 It is for the HIU to decide what other support and assistance is necessary in respect of a particular death. For example, the HIU might put in place specific arrangements for the provision of updates and advice on the process as the investigation progresses, and might offer pastoral support to families who find the investigative process to be confusing or distressing. The HIU must provide information about support services available, but will not have the power to offer financial assistance or legal advice, which may be available through other routes.

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

- 88 This clause requires the Director to issue a statement setting out how the HIU will exercise its family support function. This might, for example, include a description of the kinds of support services to which the HIU might refer families and how those support services differ from the kind of support that the HIU can itself offer.
- 89 The Director must consult the Commission for Victims and Survivors before issuing the statement.

## Clause 24: Operational powers of the Director and other HIU officers and Schedule 7

- 90 This clause confers the powers and privileges of a constable on the Director and permits the Director to designate any HIU officer as having such powers, where the Director is satisfied that the officer is capable of exercising those powers, has received adequate training and is otherwise a suitable person to exercise them. The Director and HIU officers can only exercise the powers and privileges of a constable in criminal investigations.
- 91 When the Director designates an officer with the powers of a constable, that designation may be time limited. For example, the Director might decide that an officer only needs to be designated for a short period of time in order to conduct a particular part of the investigation.
- 92 The Director can limit the operational powers the designated HIU officer will have, and the purposes for which they are authorised to use these powers. For example, the Director may decide not to designate HIU officers with some of the powers of a constable relating to general public safety or the maintenance of public order (e.g. confiscating alcohol at public processions) on the basis that they are unlikely to be used for the purpose of conducting the HIU's investigations.
- 93 A designated HIU officer is placed on the same footing as a police constable in Northern Ireland, so that references in existing legislation to a constable will include references to a designated HIU officer, including in relation to the issue of warrants. This Schedule is linked to clauses 35 and 36, which provide that the Department of Justice, or the Secretary of State in relation to non-devolved matters, has the power to make regulations which are considered appropriate in consequence of designated HIU officers having the powers and privileges of constables. For example, some of the provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 require actions to be authorised by a police officer of a particular rank. Regulations might specify that such actions can be authorised by a designated HIU officer of a particular description, such as a grade or a pay scale, depending on how the HIU is structured.
- 94 It is a criminal offence to assault, resist, obstruct or impede a designated HIU officer, or anyone assisting that officer in their work. The punishment for such an offence is, on summary conviction, up to 6 months' imprisonment or a fine of up to £5,000 or both, and, on indictment, up to 2 years' imprisonment or a fine or both, replicating the penalty that would apply where such an offence was committed in respect of a police officer (see section 66 of the Police (Northern Ireland) Act 1998).
- 95 It is also a criminal offence to impersonate an HIU officer. The punishment for such an offence is, on summary conviction, up to 3 months' imprisonment or a fine of up to £5,000 or both, and on indictment, up to 12 months' imprisonment or a fine or both. This replicates the penalty available for impersonating a police officer (see section 67 of the Police (Northern Ireland) Act 1998).
- 96 These two offences extend to Northern Ireland only, because the operational powers of HIU officers will only be available in Northern Ireland.

## Clause 25: Full disclosure to the HIU and Schedule 8

- 97 The Stormont House Agreement includes a commitment from the UK Government that it will make full disclosure to the HIU<sup>3</sup>. This clause ensures that relevant authorities (as defined in clause 39 and which includes the UK Government and its agencies, the security

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<sup>3</sup> Paragraph 37 of the Stormont House Agreement - <https://www.gov.uk/government/publications/the-stormont-house-agreement>

services, the PSNI and the Ombudsman, The National Archives and Public Record Office of Northern Ireland) disclose to the HIU all information, documents and other material that the HIU might reasonably require to carry out its functions.

- 98 When requiring information, or when a relevant authority decides to provide information voluntarily, the HIU and relevant authority are to agree how the information should be provided. For example, the HIU and a relevant authority might agree that certain documents will be provided in electronic form, or that certain material will be accessed at the premises of the relevant authority. However, the HIU can specify reasonable requirements about how the information, document or other material should be made available. Any such requirement must also not contravene any regulations made under clause 36(4) about the safe handling and holding of information.
- 99 The HIU can require the Chief Constable or the Ombudsman to give it assistance to make effective use of the information, document or material provided. For example, if the HIU needed to understand a reference on a document to the PSNI's file system, the HIU would be able to request that the Chief Constable provide such assistance and the Chief Constable could not refuse this request.
- 100 A relevant authority providing the HIU with information, documents or other material does not constitute a breach of confidence or any other general restriction placed on information disclosure. The Investigatory Powers Act 2016 is amended by paragraph 7(2) of Schedule 19 to ensure that it is possible to disclose intercept to the HIU.
- 101 Schedule 8 enables a limited set of DNA profiles and fingerprints, which would otherwise have to be destroyed, to be kept for use in the HIU's investigations.

#### Clause 26: Identifying information given to HIU that is subject to additional safeguards and Schedule 9

- 102 This clause introduces Schedule 9, which deals with the identification of "prejudicial information", "sensitive information" and "protected international information", which are defined in clause 39.
- 103 Schedule 9 requires that, when relevant authorities are providing information to the HIU, they must assist the HIU in complying with its own duties by identifying and notifying the HIU of any information which is sensitive or prejudicial information. The HIU must also identify such information itself from time to time, so that any regulations about the secure holding of information can be properly applied. The Secretary of State may also notify the HIU if the HIU holds any protected international information. For example, if the UK Government gives the HIU information which was originally provided to the UK Government by the government of another country, and the general disclosure of that information would damage the UK's relationship with that country and the prospect of the UK receiving such information in the future, the Secretary of State might notify the HIU that the information is protected international information.

#### Clause 27: Onward disclosure of information by the HIU and Schedules 10 and 11

- 104 The HIU has a number of specific powers and duties to disclose information to a range of persons. For example, one of its core functions is to prepare family reports for the relatives of the deceased (see clause 6). The HIU is also required to provide a full report of each of its criminal investigations to the Director of Public Prosecutions for Northern Ireland, whether or not the HIU concludes that any criminal offences have been committed (see clause 13). The HIU is also required to report regularly to the Policing Board and, less frequently, to the Department of Justice and the Secretary of State (see Schedule 16).

- 105 This clause provides that those specific reporting powers and duties are not the full extent of the HIU's powers to disclose information. Subsection (1) makes clear that the HIU can disclose information in other ways too, for example when discussing cases with families or making appeals for information in the press, although the HIU could not disclose information in a way that would be inconsistent with its statutory functions.
- 106 The Stormont House Agreement states that: "in order to ensure that no individuals are put at risk, and that the Government's duty to keep people safe and secure is upheld, Westminster legislation will provide for equivalent measures to those that currently apply to existing bodies so as to prevent any damaging onward disclosure of information by the HIU."<sup>4</sup>
- 107 Given the provisions about disclosure to the HIU from relevant authorities at clause 25, it is necessary to place restrictions on the onward disclosure of certain limited kinds of information. This clause provides that the HIU's powers to disclose information do not override its general duties under the Bill, so the HIU cannot disclose information which would breach its duties not to prejudice national security (but see paragraph 108 and 109 below), put at risk the life or safety of any individual, prejudice actual or prospective criminal proceedings in the UK or Ireland, or police disciplinary proceedings in respect of members of the PSNI. The HIU also cannot disclose protected international information (but see paragraph 108 and 109 below).
- 108 In most cases, the HIU will itself be responsible for deciding whether a particular disclosure would breach its duties. The clause provides that the HIU can disclose sensitive information or protected international information where permitted to by Schedule 10. Accordingly, the HIU would be able to disclose sensitive information to the Secretary of State. It will also be able to disclose sensitive information to the Director of Public Prosecutions, the PSNI, Her Majesty's Inspectorate of Constabulary, the Chief Inspector of Criminal Justice in Northern Ireland or a coroner who is a High Court or County Court judge (or, in England and Wales, to a coroner who is a High Court or Circuit Judge), without seeking prior permission of the Secretary of State. Before disclosing sensitive information in this way, the HIU must notify the Secretary of State in advance and wait a period of ten working days before making such disclosure (paragraph 3 of Schedule 10).
- 109 However, it would contravene this clause for the HIU to disclose sensitive information to any other person, or protected international information, unless the disclosure has either been permitted, or has not been prohibited, by the Secretary of State under the process set out in paragraphs 4 and 5 of Schedule 10. This recognises the Secretary of State's overarching responsibilities and expertise in respect of national security and international relations.
- 110 This clause also makes clear that the HIU's powers to disclose information do not override existing protections provided by other legislation. The HIU cannot contravene the Data Protection Act 1998, so it must act fairly and lawfully in relation to personal data (information from which a living person can be identified). Similarly, the HIU cannot contravene Part 1 of the Regulation of Investigatory Powers Act 2000 (or the subsequent provisions in the Investigatory Powers Act 2016, once enacted), so it cannot make prohibited disclosures about the interception of communications.
- 111 Schedule 11 makes it an offence for current and former HIU officers and members to disclose certain information. The defences to this offence, the location where the offence may be committed and the penalty for the offence mirror the provisions in respect of

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<sup>4</sup> Ibid

offences under the Official Secrets Act 1989.

## Clause 28: Co-operation between the HIU and other bodies and Schedule 12

112 This clause allows the HIU and all other persons and bodies to cooperate in the exercise of their respective functions.

113 Schedule 12 provides for some specific instances of cooperation, such as where the PSNI is to investigate events linked to a death within the remit of the HIU (see paragraph 1). For example, a weapon used in an act of violence which caused a death within the HIU's remit may have also been used in an armed robbery, which is investigated by the PSNI. The PSNI and the HIU will be required to make arrangements for co-operating in respect of their individual investigations. In appropriate cases, these arrangements might include the PSNI temporarily suspending their investigation until the HIU has concluded its investigation into the death. The same provision applies to concurrent investigations by the Ombudsman by virtue of paragraph 2.

114 Paragraph 3 makes provisions about inquests. If, before the period of operation of the HIU, a Coroner has decided to hold an inquest, or the Attorney General for Northern Ireland has ordered an inquest, into a death within the remit of the HIU which is ongoing when the HIU starts work, the HIU and Coroner must make arrangements to cooperate. However, during the period of operation of the HIU, Schedule 12 provides that no new decisions can be made by Coroners, or orders made by the Attorney General for Northern Ireland, to hold an inquest until the HIU has issued a family report into the case. After the issue of a family report (or if the HIU's period of operation ends without the issue of a family report) a Coroner may only decide to hold an inquest, and the Attorney General for Northern Ireland may only order an inquest, if there are compelling reasons to do so.

115 Paragraph 4 of Schedule 12 requires that where, in the Director's view, a criminal offence requires investigation but does not relate to a death within the remit of the HIU, the Director must notify the person or body responsible for an investigation and co-operate in that investigation. For example, if the HIU discovered new evidence which would justify further investigation of a death which took place in Great Britain, the Director would be required to inform the police force responsible for that investigation and to cooperate with that police force if it were to decide that further investigation was needed.

116 Paragraph 6 requires the HIU to implement arrangements made in any agreement between UK and Ireland regarding co-operation between the HIU and the Garda Síochána.

117 The remaining provisions are self-explanatory.

## Clause 29: Police Service and Ombudsman's functions and police complaints

118 This clause disapplies statutory provisions which currently require the PSNI to take measures to bring an offender to justice or for the Ombudsman to investigate complaints, where the death is the subject of an HIU investigation. In effect, this means that the PSNI and the Ombudsman will not be required to duplicate HIU investigations. These provisions do not however prevent the PSNI from using its investigative powers, whether to conduct its own investigation or to assist the HIU. It simply removes the legislative duty to bring offenders to justice.

## Clause 30: Code of ethics

119 This provision is self-explanatory. See also the provisions in Schedule 15 regarding Policing Board oversight of the HIU.

## Clause 31: Complaints and discipline and Schedule 13

- 120 This clause places a duty on the HIU to establish and publish a procedure for complaints against the HIU and its officers, and a procedure for disciplining officers of the HIU.
- 121 Schedule 13 provides a power to give the Ombudsman a role in respect of complaints about designated HIU officers. This power can be exercised where the HIU and the Ombudsman agree that the Ombudsman should have a role, and the Department of Justice approves. The HIU must consult the Policing Board before making or altering any agreement. Any agreement made between the HIU and the Ombudsman can be altered or stopped completely with the approval of the Department of Justice.
- 122 In the absence of such an agreement, the Department of Justice may, after consultation with the Ombudsman, the HIU and the Policing Board, make secondary legislation to give the Ombudsman a role in investigating complaints against designated HIU officers. This power is subject to the negative resolution procedure in the Northern Ireland Assembly.
- 123 This provision is similar to the provisions in sections 60 to 60ZC of the Police (Northern Ireland) Act 1998 in respect of constabularies other than the PSNI, immigration officers and NCA officers.

### Clause 32: Inspection and oversight of the HIU etc. and Schedules 14 and 15

- 124 This clause introduces Schedules 14 and 15, which detail the inspection arrangements for the HIU and the oversight of the HIU by the Northern Ireland Policing Board respectively.
- 125 Under Schedule 14 the HIU will be subject to regular inspection by the Chief Inspector of Criminal Justice. Her Majesty's inspectors of constabulary may also inspect the HIU, but will only do so on request. The Department of Justice may request an inspection at any time in relation to devolved matters. In relation to non-devolved matters, the Secretary of State may request an inspection.
- 126 As with reports on inspections of the PSNI and other justice bodies, these provisions include a power for the Secretary of State to prevent disclosure of information which might prejudice national security. During the course of inspections of the HIU, these inspection bodies may examine information which was originally provided by the government of another country. As such, the Secretary of State may also prevent the disclosure of information which would damage international relations.
- 127 Schedule 15 provides for the oversight of the HIU by the Northern Ireland Policing Board. These provisions are self-explanatory.

### Clause 33: Reporting and information for oversight and Schedule 16

- 128 This clause introduces Schedule 16, which outlines reporting and information oversight arrangements. The provisions in Schedule 16 are self-explanatory.

### Clause 34: Guidance and protocols relating to information

- 129 This clause is self-explanatory.

### Clause 35: Regulation-making powers of the Department of Justice and Clause 36: Regulation-making powers of the Secretary of State

- 130 Clause 35 gives the Department of Justice powers to make regulations in respect of the operational powers of HIU officers (linked with clause 24 and Schedule 7) and in relation to the holding of prejudicial information by the HIU. This might include, for example, detailed requirements about the arrangements that the HIU must make in order to ensure that information which would put individuals at risk is kept securely. The Department of Justice may only make provision in relation to transferred matters, and in relation to reserved

matters with the consent of the Secretary of State (see clause 38).

131 Clause 36 gives the Secretary of State equivalent powers to make regulations. The Secretary of State may not make transferred provision without the consent of the Northern Ireland Assembly (see clause 38).

### Clause 37: Conclusion of the HIU's work

132 Paragraph 40 of the Stormont House Agreement states that the HIU should aim to complete its work within 5 years. Clause 37 provides that the HIU will stop investigations after 5 years, however the other functions of the HIU may continue beyond this period. The HIU could therefore do work such as completing family reports after this time period. The Secretary of State has power to make regulations extending the period for not more than a year. The Secretary of State must consult the bodies listed in the clause about whether the power, on each occasion, should be exercised and about the regulations themselves. Such regulations would be subject to the affirmative procedure.

133 The Department of Justice and the Secretary of State have concurrent powers to wind up the HIU at any time, having first consulted a range of other persons.

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

134 Since much of the provision relating to the HIU is within the legislative competence of the Northern Ireland Assembly, a legislative consent motion would normally be sought for the exercise of the Secretary of State's powers, if the same provision were made by primary legislation. Similarly, any reserved provision made by legislation in the Northern Ireland Assembly under the powers of the Department of Justice would require the consent of the Secretary of State.

135 This clause therefore makes Assembly consent a precondition of the Secretary of State's regulation making power in relation to devolved/transferred matters. Conversely the Department of Justice is restricted to making provision in relation to reserved and transferred matters and can only make reserved provision with the consent of the Secretary of State. This reflects the devolution settlement under the Northern Ireland Act 1998.

### Clause 39: Interpretation of Part 2

136 This clause provides definitions of terms used in Part 2 of the Bill.

## Part 3: The Independent Commission on Information Retrieval

### Clause 40: The Independent Commission on Information Retrieval

137 This clause refers to the Treaty between the UK Government and the Government of Ireland that establishes the Independent Commission on Information Retrieval. This treaty is available here: [http://data.parliament.uk/DepositedPapers/Files/DEP2016-0057/Agreement\\_establishing\\_the\\_ICIR.pdf](http://data.parliament.uk/DepositedPapers/Files/DEP2016-0057/Agreement_establishing_the_ICIR.pdf).

138 The other provisions in Part 3 make the domestic provisions necessary for the Commission to operate effectively in the United Kingdom.

139 This clause enables the First Minister and deputy First Minister jointly to appoint two of the five Commissioners, provides for the Commission to have the legal capacity of a body corporate and allows for the Secretary of State to provide appropriate resources for the Commission to carry out its functions.

## Clause 41: Functions of the Commission

140 This clause outlines the Commission's key function under the provisions of the Treaty, which is to gather information about Troubles-related deaths and provide reports to families. It reflects the stated objective of the Commission in the Stormont House Agreement, which is to enable victims and survivors to seek and privately receive information about the Troubles-related death of their next of kin<sup>5</sup>.

141 This clause reflects that the Commission will not proactively seek information about any death without the initiation of the family, but will accept unsolicited information and hold it securely in case the relevant family subsequently comes forward to request it.

## Clause 42: The reporting function

142 This clause provides for an eligible family member who makes a request for information to the Commission to receive a written report. Although the information contained within a report will not be subjected to the same standard of testing that would be expected in the criminal justice system, this clause requires that the credibility of the information must be established to the satisfaction of the Commission.

143 This clause also requires the Commission to provide a written report on any patterns and themes it has identified from its work, and on the level of cooperation it has received in carrying out its work, to the Implementation and Reconciliation Group (IRG). The Commission may also provide the IRG with an interim report on these matters.

144 The IRG is a separate body that will be established under Part 5 of the Bill, pursuant to the Stormont House Agreement<sup>6</sup>.

145 This clause also provides for the Commission to publish an annual report on prescribed matters such as finances and administration and which must include a statement of how many times the Secretary of State has notified the Commission that information in a draft report could put at risk the life or safety of a person in the UK or prejudice the national security of the UK. The clause also requires the Commission to provide copies of its annual report to the UK Government, the Government of Ireland, the HIU, the Deputy Keeper of Records NI (see clause 51 and 52) and the IRG.

## Clause 43: Responsibilities in exercising functions

146 This clause sets out that the Commission must exercise its functions consistent with the general principles at clause 1. It places the Commission under a statutory duty not to do anything in carrying out its functions which might put at risk the national security of the UK or Ireland, the lives or safety of individuals, or any legal proceedings in either jurisdiction, including those which it considers are likely to be brought in future. These duties reflect those imposed on the Commission under the Treaty. Very similar statutory duties were placed on the Independent Monitoring Commission and the Independent Reporting Commission under the Northern Ireland (Monitoring Commission) Act 2003 and Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016 respectively. This clause also makes clear that the Commission must not reveal the name or identity of anyone who contributes information. This is intended to ensure that people holding information about deaths will be prepared to provide it, so that it can be shared with the family of the deceased. The clause also provides that the Commission must not disclose the name or identity of those alleged by contributors to be responsible for a death. This reflects

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<sup>5</sup> Paragraph 41 of the Stormont House Agreement - <https://www.gov.uk/government/publications/the-stormont-house-agreement>

<sup>6</sup> Paragraphs 51 to 55 of the Stormont House Agreement  
<https://www.gov.uk/government/publications/the-stormont-house-agreement>

that the Commission will not be able to subject information received to the same standard of testing that would be expected in the criminal justice system.

#### Clause 44: Legal privileges etc.

- 147 This clause provides for the Commission to have certain privileges and immunities.
- 148 It provides for the Commission to have immunity from suit and legal process. This means that, as provided in the Stormont House Agreement, it will not be subject to legal claims or legal process, including claims for judicial review.
- 149 It also provides for the Commission's official archives and premises to be inviolable in the same way as inviolability is accorded to a diplomatic mission as set out in the Vienna Convention on Diplomatic Relations 1961. This means, for example, that the Commission's premises cannot be subject to search or requisition.
- 150 However, there may be instances where the Commission decides it is appropriate to waive these immunities in a particular case. For instance, if a staff member wanted to make a claim to an employment tribunal, the Commission could choose to waive its immunity from legal process to allow the staff member to pursue the claim. This clause therefore allows the Commission to waive these protections, except in respect of the inviolability of information about a death within the Commission's remit. This reflects the probable sensitivity of this 'raw' information (as opposed to that contained in a family report, which will not for instance name individuals in accordance with clause 43) and the potential risks to individuals, should it be disclosed publicly.
- 151 This clause also enables the Secretary of State to make regulations to confer further privileges on the Commission, in addition to those conferred by subsections (1) and (2), provided that they are listed in Part 1 of Schedule 1 to the International Organisations Act 1968 ("the 1968 Act"). It also gives the Secretary of State the power to confer on Commissioners, staff of the Commission (including relevant other persons, such as agents of the Commission), and members of their families who form part of their household by regulation, the privileges and immunities set out in Parts 2, 3 and 5 of Schedule 1 to the 1968 Act with any modifications required. The Secretary of State can also make provision in the regulations for the waiver of these privileges and immunities. Clause 66(3) establishes that any such regulations are subject to the negative procedure.
- 152 Similar provision was made in respect of the Independent Commission for the Location of Victims' Remains, the Independent Monitoring Commission and the Independent Reporting Commission (see section 2(1) of the Northern Ireland (Location of Victims Remains) Act 1999, section 1(2) of the Northern Ireland (Monitoring Commission etc.) Act 2003, and section 3(3) of the Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016 respectively).

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

- 153 This clause provides that information received by the Commission about a death within its remit will not be admissible as evidence in criminal, civil or coronial proceedings. This would include information that is subsequently included by the Commission in a family report.
- 154 Subsection (4) ensures that this inadmissibility does not extend to any information held by a person other than the Commission, including where the same piece of information is given to the Commission. This ensures that information held, for example, by public authorities does not itself become inadmissible simply by virtue of it having been supplied to the

Commission. It also means that, for example, if person A gives information to the Commission and person B separately provides the same information to the police, the police would not be prevented from relying on the information from person B for the purposes of prosecution, and B's information would be admissible.

155 Subsection (4) also has the effect that policing authorities or a coroner, for instance, would not be prevented from pursuing lines of inquiry based on information disclosed by the Commission in a report to a family. If such inquiry, pursued on the basis of information in a report, led to evidence being generated, then that new evidence would not fall under the inadmissibility provisions (despite the report itself being inadmissible).

156 Subsection (2) makes explicit that nothing in the inadmissibility provisions creates an amnesty for any criminal offence by any individual. This reflects paragraph 49 of the Stormont House Agreement which states: "No individual who provides information to the body will be immune from prosecution for any crime committed should the required evidential test be satisfied by other means".

#### Clause 46: Arrangements to assist the Commission to meet its obligations and Clause 47: Offence: member of Commission causes breach of section 46 arrangements

157 Clause 46 applies to the disclosure of all reports by the Commission, including reports to families, the report to the Implementation and Reconciliation Group, and annual reports.

158 All draft reports must be sent to the Secretary of State before they are released to the intended recipient. Pursuant to Article 11 of the Treaty, it should be noted that parallel arrangements will be introduced in Ireland to require the Commission to send all draft reports to the Government of Ireland.

159 The Secretary of State has a 60-day decision period in which to notify the Commission whether the information contained within the report, if released, would or would not prejudice the national security of the UK, or put at risk the life or safety of a person in the UK. Again, parallel arrangements will be made in Ireland for notification in these terms to be given by the Government of Ireland on receipt of a draft report.

160 If, in the Secretary of State's view, information contained within a report does prejudice national security in the UK or put at risk the life or safety of a person in the UK, then the Secretary of State must in the notification to the Commission identify the precise information causing the prejudice or risk.

161 The Commission must not release the report unless the Secretary of State has notified the Commission that the prejudice or risk would not be caused by the disclosure, or the 60-day decision period ends without the Secretary of State making any notification under subsection (2). Subsection (4)(b) has the effect that the Commission may release the report so long as it has omitted the information identified as causing the risk or prejudice. It will also be open to the Commission instead to redraft and submit a different draft report for consideration by the Secretary of State.

162 Clause 47 makes it an offence for a Commissioner to cause the Commission to breach its duty under clause 46(4), in which case a Commissioner could face prosecution in the UK, whether the disclosure of the information occurred in the UK or elsewhere. Such a breach would occur, for example, if three of the Commissioners (including the chairperson) agreed to release a report containing information causing a risk to life, despite a notification having been received from the Secretary of State under clause 46(2).

163 The penalty for conviction on indictment of this offence is imprisonment for a maximum of two years or a fine or both. On summary conviction the penalty is imprisonment for up to

six months or a fine, or both.

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

164 This clause makes it an offence for a Commissioner, a member of the Commission's staff, an agent, or someone carrying out work for, or giving advice, to the Commission, to disclose information about a death within the Commission's remit unless this disclosure has been authorised by the Commission. The offence only applies insofar as the person making the disclosure obtained the information in their capacity as a Commissioner, member of staff, or other relevant position. If the person obtained the information separately from their work for the Commission, disclosure of such information would not be caught under this offence. A person charged with this offence would be able to defend themselves by proving that they reasonably believed that the Commission had authorised the disclosure.

165 The clause also creates a similar offence for people that have ceased to work for the Commission in such a capacity. The difference here is that the offence relates simply to disclosure of this information where the information was obtained in their previous capacity of having been a Commissioner, member of staff, or other relevant position. There is no equivalent defence for reasonable belief that the disclosure was authorised, on the grounds that a former employee would not be in a position to be authorised to disclose information by or on behalf of the Commission.

166 The penalty for conviction on indictment of these offences is imprisonment for a maximum of two years or a fine or both. On summary conviction the penalty is imprisonment for up to six months or a fine, or both.

167 An offence is committed whether the disclosure occurs within or outside of the United Kingdom, apart from where it occurs in Ireland. This is because Article 11(9) of the Treaty makes clear that legislation in Ireland will establish an equivalent offence.

#### Clause 49: Conclusion of the Commission's work

168 This clause deals with what will happen at the conclusion of the Commission's work. It provides the Secretary of State with the power to repeal some or all of clauses 40 to 43, 46, 47 and 50 by regulations, following consultation with the Government of Ireland, and any other person the Secretary of State considers appropriate.

169 This clause provides that information and records about deaths within the Commission's remit held by the Commission are to be destroyed by the Commission when it ceases to operate. Subsection (5) makes clear that the Secretary of State's powers are wide enough to ensure that this happens, for example by giving the Secretary of State the power to make a former Commissioner responsible for overseeing the destruction once the Commission has been wound up. This provides assurance to those who contribute information that their information will be inaccessible after the Commission ceases to operate.

#### Clause 50: Interpretation of Part 3

170 This clause provides definitions of terms used in this Part of the Bill.

## Part 4: The Oral History Archive

#### Clause 51: The oral history archive

171 This clause provides the Public Record Office of Northern Ireland (PRONI), which is a division of the Department for Communities in the Northern Ireland Executive, with the new function of organising an oral history archive (OHA). The archive will comprise a new

classification of record – an ‘oral history record’ as well as related records, catalogues and ephemera which are ancillary to oral history records received, where these would inform the orderly preservation of and future access to those records.

172 PRONI’s statutory remit under the Public Records Act (Northern Ireland) 1923 is for the reception and preservation of public records. This clause extends this role so that the oral history archive can both invite oral histories from contributors and make oral history records. Records can be received from contributors both inside and outside of the UK. The Deputy Keeper must identify other organisations involved in oral history work and inform them of the possibility of contributing to the OHA. It will receive and preserve the oral histories, making them accessible to the public (except where this is not appropriate).

### Clause 52: The role of the Deputy Keeper

173 This clause places the oral history archive under the charge and superintendence of the Deputy Keeper of the Records. In particular, the Deputy Keeper will decide which oral history records can be (a) accepted into the archive, (b) made public and (c) disposed of. It prevents a Northern Ireland Department from directing the Deputy Keeper in respect of these duties to ensure that she or he is able to act independently and without political pressure in the exercise of her or his duties (pursuant to paragraph 24 of the Stormont House Agreement). The Deputy Keeper will appoint and consult with a steering group who have experience in obtaining oral history records both in and outside of Northern Ireland when issuing a statement about how she or he will operate the OHA.

### Clause 53: Annual report

174 This clause places a requirement on the Deputy Keeper to publish an annual report detailing the work of the archive. The legislation commits the Deputy Keeper to preparing the annual report, setting the publication date and submitting the report to the Minister of the Department for Communities and to the First Minister and deputy First Minister at least two weeks before the publication date. The Minister of the Department for Communities must lay the Annual Report before the Assembly on the day it is published by the Deputy Keeper (or as soon afterwards as is practicable). A copy of the report must also be given to the HIU, the ICIR and the IRG.

### Clause 54: Report to the Implementation and Reconciliation Group

175 This clause requires the oral history archive to provide a written report on patterns and themes it has identified from its work to the chair of the IRG.

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

176 This clause sets out the procedure for disposing of any records that will not be kept as part of the archive and requires that the steering group must be consulted with before making rules about disposals. It mirrors the procedures for managing the disposal of documents not forming, or ceasing to form, part of the public record under the Public Records (Northern Ireland) Act 1923 and the Disposal of Documents Rules (Northern Ireland) 1925. This clause also provides a rule making power by which the Department may set out more detailed procedures for disposal of records, but the rules cannot include provision to allow the Deputy Keeper to be given directions.

### Clause 56: Power to make rules

177 This clause provides a rule making power for the Department to make rules about the exercise of the function of organising the archive, including the process for contributors to give informed consent to their participation. The rules do not allow for any directions to be given to the Deputy Keeper, in order to ensure her or his independence and the steering

group must be consulted with before making rules.

#### Clause 57: Immunity from suit

178 This clause provides limited protection from defamation claims in the courts for the Department, its staff and agents in organising the oral history archive, ensuring protection for an employee or agent exercising such a function or acting in good faith. This would, for instance, protect the archive and its staff from a defamation claim made in respect of information in an oral history record. It is possible, in a particular case, for the Deputy Keeper to waive the immunity in whole or in part.

#### Clause 58: Interpretation of Part 4

179 This clause provides definitions of terms used in this Part of the Bill.

## Part 5: The Implementation and Reconciliation Group

#### Clause 59: The Implementation and Reconciliation Group and Schedule 17

180 This clause establishes the IRG as a body corporate.

181 The IRG will be independent and, as such, schedule 17 makes clear that it does not hold any status, privilege or immunity of the Crown. It also provides for membership of the IRG, as follows: the chair is to be jointly appointed by the First Minister and deputy First Minister; one member is to be appointed by the UK Government; one member by the Government of Ireland; and eight other members to be nominated by political parties.

182 The nominations made by political parties are set out in paragraph 54 of the Stormont House Agreement, which states that the other appointments will be nominated as follows: Democratic Unionist Party – 3 nominees, Sinn Fein – 2 nominees, Social Democratic and Labour Party – 1 nominee, Ulster Unionist Party - 1 nominee, Alliance Party – 1 nominee. Paragraph 3(3) makes it clear when the nomination process occurs and limits the number of IRG members that a political party can nominate at any one time.

183 Schedule 17 makes clear that persons holding political office may not be members of the IRG, and also sets out the arrangements for quorate decision making. Quorum is 7 or more members and must include the Chair, the UK Government nominee, the Government of Ireland nominee; decisions must be agreed by at least two thirds of members participating. This means if there are 7 members participating, 5 members would need to agree for a valid decision to be made; if there were 8 or 9 members participating, 6 would need to agree; if there were 10 members participating, 7 would need to agree, and if 11 members were participating, 8 would need to agree for any decision to be valid.

184 The remaining provisions are self-explanatory.

#### Clause 60: Functions of the IRG

185 This clause requires the IRG to act consistently with the general principles set out in clause 1 and for its members to work collaboratively and in a way that will secure public confidence. It also sets out two of the functions of the IRG, which reflect paragraphs 51 and 52 the Stormont House Agreement. These functions are to: 1) take appropriate steps to promote reconciliation, and; 2) to review and assess the implementation of the measures to address the legacy of the past contained within the Stormont House Agreement. This does not confer a function to review or assess an Act of Parliament or treaty.

186 The IRG is required to report annually to the First and deputy First Ministers, the Governments of the UK and of Ireland on its work to review and assess implementation of the relevant parts of the Stormont House Agreement and promote reconciliation.

## Clause 61: Reports to the IRG

187 This clause sets out the detailed arrangements for the IRG to receive and share reports from the other legacy bodies - the HIU, ICIR and OHA - as well as from the Coroners' Courts of Northern Ireland.

## Clause 62: Independent academic report

188 This clause places the IRG under a duty to commission independent academic experts to report on patterns and themes arising through the work of the other legacy institutions, pursuant to paragraph 51 of the Stormont House Agreement, and through relevant work of the Coroners' Courts of Northern Ireland.

189 The academics' report will be commissioned once the IRG has received the principal reports (but not simply interim reports) from the HIU, ICIR, OHA and the Coroners' Courts of Northern Ireland. This will not be until the legacy institutions have been operational for a period of 5 years. This is intended to ensure that the independent academic experts have a sufficient evidence base with which to work. This clause also details a number of other sources of information which the academics may use to inform their work.

190 It also makes clear that the academic experts must act independently and free from political influence. It is the responsibility of the IRG Chair to ensure that the academic report does not breach data protection legislation or put the safety or life of anyone at risk.

191 The remaining provisions of this clause are self-explanatory.

## Clause 63: Conclusion of the IRG's work

192 This clause provides powers for either the First Minister acting jointly with the deputy First Minister, or the Secretary of State to wind up the IRG at the conclusion of its work.

193 This clause makes Assembly consent a precondition if the Secretary of State makes regulations in relation to devolved/transferred matters. Conversely the First Minister and deputy First Minister are restricted to making provision in relation to reserved and transferred matters and can only make reserved provision with the consent of the Secretary of State.

## Part 6: Prisoner Release

### Clause 64: Prisoner release under the Northern Ireland (Sentences) Act 1998 and Schedule 18

194 This clause introduces Schedule 18, which amends the legislation under which those convicted of scheduled offences in Northern Ireland (or, in the case of those sentenced outside Northern Ireland, similar offences), can apply for early release. This early release scheme was set up pursuant to the commitment at section 10 of the Belfast Agreement 1998 and allows qualifying prisoners (excluding members of organisations not on ceasefire) to apply to the Sentence Review Commissioners for early release on licence. Currently prisoners are eligible to apply for early release regardless of where in the UK they were sentenced, however they must be serving their sentence in Northern Ireland. Schedule 18 extends the early release scheme to those sentenced in or outside of Northern Ireland for offences equivalent to scheduled offences where offences were committed between 1st January 1968 and 7th August 1973 inclusive. Schedule 18 also extends the geographical extent of the Northern Ireland (Sentences) Act 1998 to the whole of the UK, to bring prisoners serving their sentences outside of Northern Ireland under the scope of the scheme. Prisoners would therefore be eligible to apply under the scheme irrespective of

where their sentence was being served.

## Part 7: Final Provisions

### Clause 65: Consequential and transitional provision etc. and Schedule 19

195 This clause introduces Schedule 19, which sets out the consequential amendments required to existing legislation, including a provision which applies the Official Secrets Act 1989 to HIU members and officers. That Act includes a criminal offence of disclosure of information, which is similar in some respects to the offence of disclosure of information in breach of the HIU's duties under Schedule 10. In some cases, the disclosure of information by a current or former HIU officer might be an offence under both Schedule 11 and the Official Secrets Act 1989. In such circumstances, whether the person is charged with one or both of the offences would be a matter for the relevant prosecuting authority. The remaining changes to other existing legislation are self-explanatory.

196 The HIU is intended to complete its work within a period of 5 years (see clause 9). Clause 65 provides for a preparatory period of at least 8 months from the point at which the HIU is established (on commencement of clause 2(1)). This is to enable practical arrangements for its work to be put in place before it becomes fully operational.

197 The other provisions of this clause are self-explanatory.

### Clause 66: Regulations and laying of documents

198 This clause is self-explanatory.

### Clause 67: Interpretation

199 This clause provides definitions of terms used throughout the Bill.

### Clause 68: Short title, commencement and extent

200 This clause is self-explanatory.

## Commencement

201 The provisions will come into force on such a day as the Secretary of State may appoint by regulations and there may be different days appointed for different purposes (see clause 68).

## Financial implications of the Bill

202 The main increases in public expenditure resulting from the Bill are:

- The set up and ongoing running costs of the HIU.
- The set up and ongoing running costs of the ICIR. As the ICIR will be established through a treaty between the UK Government and Government of Ireland, both will sponsor the ICIR and provide funding.
- The set up and ongoing running costs of the OHA.
- The set up and ongoing running costs of the IRG.

203 The UK Government has agreed to provide a financial contribution of up to £150m (£30m

per annum for 5 years), to help fund bodies to deal with the past established through this Bill.

204 The Impact Assessment which accompanies the Bill will provide additional information on the costs and benefits of establishing the new legacy institutions.

## Parliamentary approval for financial costs or for charges imposed

205 This Bill will require a Money Resolution due to increased expenditure with the establishment of the new legacy institutions.

## Compatibility with the European Convention on Human Rights

206 Section 19 of the Human Rights Act 1998 requires a Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with Convention rights (as defined by section 1 of that Act).

207 The Bill Minister has made the following statement:

"In my view, the provisions of the Northern Ireland (Stormont House Agreement) Bill are compatible with Convention rights."

208 The Government will publish a separate memorandum of ECHR issues with an assessment of the compatibility of the Bill's provisions with Convention rights. This memorandum will be available on the Government website.

## Related documents

209 The following documents are relevant to the Bill and can be read at the stated locations:

- Stormont House Agreement:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/390672/Stormont\\_House\\_Agreement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf)
- Policy paper on measures in the Bill (published in September 2015 - there have been some subsequent changes to the Bill measures):  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/462888/Policy\\_Paper\\_-\\_Summary\\_of\\_Measures\\_23\\_Sept\\_2015\\_Final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462888/Policy_Paper_-_Summary_of_Measures_23_Sept_2015_Final.pdf)
- [Public consultation on the Bill:]

## Annex A - Territorial extent and application

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
Part 1 - Introductory Provisions Clause 1	Yes	Yes	No	Yes	No	Yes	No
Part 2 – The Historical Investigations Unit Clauses 2-12 and 16-31 Schedules 1-7 (except paragraphs 8-10 of schedule 7) and 13-16	Extends to E&W but does not apply to England	Extends to E&W but does not apply to Wales	No	Yes but does not apply to Scotland	No	Yes	Yes
Part 2 Schedule 7 (paragraphs 8-9)	No	No	No	No	No	Yes	Yes
Part 2 Clauses 12-15 Schedules 8-16	Extends to E&W but does not apply to England (except for Schedule 11 disclosure offences which also apply in England)	Extends to E&W but does not apply to Wales (except for Schedule 11 disclosure offences which also apply in Wales)	No	Extends to Scotland but does not apply to Scotland (except for Schedule 11 disclosure offences which also apply in Scotland)	No	Yes	No
Part 3 – The Independent Commission on Information Retrieval	Yes	Yes	No	Yes	No	Yes	No
Part 4 – The Oral History Archive	No	No	No	No	No	Yes	Yes
Part 5 - The Implementation and Reconciliation Group	Extends to E&W but does not apply to England	Extends to E&W but does not apply to Wales	No	Yes but does not apply to Scotland	No	Yes	Yes

Part 6 - Prisoner Release							
Part 7 – Final Provisions	Yes	Yes	No	Yes	No	Yes	No

# **NORTHERN IRELAND (STORMONT HOUSE AGREEMENT) BILL**

## **EXPLANATORY NOTES**

These Explanatory Notes relate to the Northern Ireland (Stormont House Agreement) Bill as introduced in the House of Commons on [        ].