

**Report pursuant to sections 3(1), 3(6), 3(7), 3(8), 3(9) and 3(10) of the Northern Ireland (Executive Formation etc) Act 2019 - regarding Executive formation; transparency of political donations; higher education and a Derry university; presumption of non-prosecution; Troubles prosecution guidance; and abortion law review**

Presented to Parliament pursuant to sections 3(1), 3(6), 3(7), 3(8), 3(9) and 3(10) of the Northern Ireland (Executive Formation etc) Act 2019



© Crown copyright 2019

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](http://nationalarchives.gov.uk/doc/open-government-licence/version/3).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.uk/official-documents](http://www.gov.uk/official-documents).

Any enquiries regarding this publication should be sent to us at [comms@nio.gov.uk](mailto:comms@nio.gov.uk)

ISBN 978-1-5286-1579-2

CCS0819901692 09/19

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

**Report pursuant to sections 3(1), 3(6), 3(7), 3(8), 3(9) and 3(10) of the Northern Ireland (Executive Formation etc) Act 2019 - regarding Executive formation; transparency of political donations; higher education and a Derry university; presumption of non-prosecution; Troubles prosecution guidance; and abortion law review**

### **Section 3(1) Executive formation**

This section of the report is based on information provided by the Northern Ireland Office.

Section 3 of the Northern Ireland (Executive Formation etc) Act 2019 requires the Secretary of State to publish and lay before both Houses of Parliament a report on progress made towards forming an Executive and other matters.

This section of the report is made in accordance with section 3(1) of that Act which states:

The Secretary of State must, on or before 4 September 2019, publish a report explaining what progress has been made towards the formation of an Executive in Northern Ireland (unless an Executive has already been formed).

### **Background**

Since the resignation of the deputy First Minister, the late Martin McGuinness, in January 2017 Northern Ireland has been without a functioning Executive. The DUP and Sinn Féin have been unable to agree to a basis on which to re-enter power-sharing and a restored Executive.

Despite the then Secretary of State calling an Assembly election on 2 March 2017 and several rounds of talks over the past two and a half years, no agreement has been reached.

There is considerable frustration in Northern Ireland at the ongoing absence of an Executive, and a large number of pressing public policy issues have gone unresolved.

Following the killing of journalist Lyra McKee earlier this year, the then Secretary of State announced the resumption of the current talks process, stating the killing had “deeply shocked everyone across the world”. As the talks began, the then Secretary of State said that “Lyra symbolised the new Northern Ireland and her tragic death cannot be in vain. Our challenge is to ensure that we continue to work for peace for the whole community.”

## **Talks - approach and progress**

The current round of talks began on 7 May 2019 and has involved all five parties represented in the Assembly who would be entitled to appoint ministers under the Northern Ireland Act 1998.

Talks have been structured around five thematic working groups;

- Rights, Language and Identity;
- Sustainability of the Institutions;
- Petition of Concern;
- Programme for Government; and
- Transparency, Accountability and Functioning of the Executive.

In the first phase of the talks, the five working groups met each week, and sometimes more than once a week. Each week also saw a party leader roundtable with the Secretary of State and the Tánaiste, Simon Coveney, to take stock of the week's progress.

A coordination committee also met weekly to agree the detailed timetable for the week ahead, and the working group leads facilitated regular bilateral meetings where the parties found that helpful.

The then Secretary of State, the Tánaiste and party leaders met Northern Ireland church leaders at a roundtable meeting to offer their insight and encouragement, while business leaders and representatives from wider civic society met the five parties to discuss their concerns at a lunch reception.

Working groups met less frequently from late June, with bilateral and multi-party negotiations between the parties taking the place of the working group meetings marking the second phase of the talks process.

In this second phase, the process has included negotiations on specific strands between the two largest parties, and these negotiations continue. The other three parties continue to play an important role in the process and are regularly updated. They have been active in discussing and agreeing issues that are important to them should they choose to join the Executive.

Since his appointment in July 2019, the current Secretary of State has continued to drive forward the current talks process with the five parties. He held phone calls and bilateral meetings with the five largest parties shortly after his appointment, as well as discussions with

the Tánaiste, Simon Coveney. These discussions have continued regularly over the summer. The Secretary of State, alongside the Tánaiste, has also met with the leaders of the five largest parties together.

The Prime Minister and the Secretary of State met the five largest parties on 31 July, which gave the opportunity for each party to discuss the talks and other issues.

The five working group leads submitted updates to the Secretary of State on their respective areas in early August. The reports provided each working group lead's personal assessment of the talks on their working group's area, which the Secretary of State used to inform the subsequent weeks of negotiation. Recent weeks have had a greater focus on negotiations between the two largest parties, with the smaller parties focusing on issues such as the Petition of Concern.

The Government's assessment is that, although some of the gaps remain significant, the range of outstanding issues in the cross-party talks is relatively narrow. It should prove possible with intensive engagement to resolve the strands of talks on the Programme for Government, Transparency and Sustainability relatively swiftly. This includes resolving issues around, for example, the accountability of special advisers to their Minister, publishing details of Ministers' meetings with external organisations, and strengthening requirements for record-keeping and the protections for whistleblowers. It also includes agreeing reforms to ensure that such a long absence of devolved institutions should not happen again, and agreeing an ambitious Programme for Government to transform Northern Ireland's public services.

There has been good engagement on the Petition of Concern with the aim of reducing the frequency with which it is used; there is an emerging consensus on a number of reforms to achieve this, with ongoing discussions as to the nature and extent of reforms.

Engagement with the two largest parties has shown that the principal remaining issues relate to rights, language and identity. Discussions between the two largest parties have focussed in particular on the Irish language, Ulster Scots and related cultural issues, as well as the most appropriate means of making legislative provision for them. There is emerging consensus on the importance of respect and support for Northern Ireland's linguistic and cultural diversity. The parties continue to disagree on the precise nature and extent of provisions to give effect to that respect and support, and the appropriate legislative means of doing so.

While the parties remain engaged and are demonstrating a willingness to find solutions to the critical issues, a renewed determination to find agreement will be needed if the process is to conclude in the coming weeks. The Government will continue to make restoration of the

Executive its priority in Northern Ireland and, working with the Irish Government, in accordance with the three-stranded approach, will take the steps necessary to maximise the prospect of an agreement being reached.

The Secretary of State has also travelled across Northern Ireland to see first-hand the impact that the lack of a functioning Executive has been having on public services and on the lives of ordinary people. This has reaffirmed his view that restoring the Executive must be his absolute priority.

Notwithstanding the challenge, the UK Government's priority in Northern Ireland remains the restoration of the Executive and the Secretary of State will continue to do everything he can to create the conditions in which an accommodation between the parties can be reached.

The UK Government, working closely with the Irish Government, will now intensify its efforts to put forward compromise solutions to the parties. If that does not succeed, then the Secretary of State's next update to the House will set out next steps to ensure adequate governance in Northern Ireland and the protection of the Belfast or Good Friday Agreement.

### **3(6) Transparency of political donations**

This section of the report is based on information provided by the Northern Ireland Office.

Section 3 of the Northern Ireland (Executive Formation etc) Act 2019 requires the Secretary of State to publish and lay before both Houses of Parliament a report on progress made towards forming an Executive and other matters.

This section of the report is made in accordance with section 3(6) of that Act which states:

The report under subsection (1) must include a report on progress made towards preparing legislation to provide for transparency of political donations and loans from 1 January 2014.

#### **The current legal position**

The anonymity for Northern Ireland donations was introduced by the then (Labour) Government in 2001 to protect donors from violence and intimidation, following recommendations from the Committee on Standards in Public Life in 1998.

The Political Parties, Elections and Referendums Act 2000 (as amended by the Transparency of Donations and Loans etc. (Northern Ireland Political Parties) Order 2018) provides for publication, by the Electoral Commission, of details of certain donations and loans made or entered into by Northern Ireland political parties at any point after 1 July 2017. However, with some exceptions, the Act does not allow for publication of details of donations or loans made or entered into before 1 July 2017.

Any changes relating to the date from which the Electoral Commission shall publish details of donations and loans to Northern Ireland political parties would have to be made under an affirmative procedure statutory instrument, using the existing powers in section 15A(1) to (3) of the Northern Ireland (Miscellaneous Provisions) Act 2006 and section 63(1) to (3) of the Electoral Administration Act 2006.

The decision to introduce legislation requiring publication of details of donations and loans received by Northern Ireland political parties from July 2017 was taken by Secretary of State for Northern Ireland following consultation with political parties in Northern Ireland and was

based on broad consensus. Ministers stated in 2017 that they did not believe it right to impose retrospective regulations on people who donated in accordance with the rules as set out in law at the time<sup>1</sup>.

The previous provisions for donations before 2017 still provided for the Electoral Commission to check that all donations were legally permissible. It is merely the case that the donors' names were not published online.

### **What steps are currently being taken/ will be taken in respect of the policy**

The current law maintains anonymity concerning most donations and loans made before 2017.

The Government has committed to reviewing the broader framework of the donations and loans regime for Northern Ireland once the arrangements, as set in the Transparency of Donations and Loans etc. (Northern Ireland Political Parties) Order 2018, have bedded in.

The regime in place for political donations and loans is specific to Northern Ireland and reflects circumstances that are unique to Northern Ireland parties and their donors. The current legislative arrangements for transparency of donations and loans to Northern Ireland political parties provided that greater transparency may be introduced in respect of donations or loans made after 1 January 2014, however in considering the merits of doing so the Secretary of State for Northern Ireland would wish to be satisfied that it creates no risk of intimidation.

The current legislative arrangements are based on broad consensus among the Northern Ireland parties and moves towards changing the law on donations before July 2017 will require a similar level of Northern Ireland consensus. There is a broader long-standing convention that changes to legislation directly affecting political parties are not made without wider discussion and consultation between parties and the Government.

---

<sup>1</sup> [1] Letter from the Secretary of State, *Northern Ireland Political Donations*, 5 July 2017.



### **3(7) Higher education and a Derry university**

This is a devolved matter. This section of the report is based on information provided by the Northern Ireland Department for the Economy.

Section 3 of the Northern Ireland (Executive Formation etc) Act 2019 requires the Secretary of State to publish and lay before both Houses of Parliament a report on progress made towards forming an Executive and other matters.

This section of the report is made in accordance with section 3(7) of that Act which states:

The report under subsection (1) must include a report on the improvement of higher education provision in Northern Ireland and the establishment of a university whose principal campus is in Derry/Londonderry.

#### **Improvement of higher education provision**

In 1994, as a means of controlling Government costs associated with Higher Education (HE) student numbers, the UK Government introduced an annual cap on the number of students each HE Institution across the UK could enrol. Following devolution in 1998, this cap was maintained in Northern Ireland and is known as the Maximum Student Number (MaSN). The MaSN does not apply to part-time undergraduates, postgraduates (with the exception of Post Graduate Certificate in Education, PGCEs), to students from outside the EU, or to students from Great Britain and the Islands. NI universities are therefore free to recruit as many non-MaSN controlled students as they wish. MaSN allocations relate to each institution as a whole, and it is for each university to decide how its allocation is applied across its campus and course provision.

The UK Government has, however, removed number controls for HE in England following the introduction of a demand-led funding system whereby students are, in large part, paying for their own HE provision through tuition fees of up to £9,250. In Northern Ireland, however, tuition fees have remained at a lower level (£4,275 for the academic year 2019/20), since the Northern Ireland Executive agreed in 2011 that tuition fees should only increase with an annual inflationary uplift. This created a divergence with England when fees there increased to £9,000 in September 2012. The remaining funding to NI HE institutions (HEIs) is made up of a teaching grant from the Northern Ireland Department for the Economy (DfE). Consequently, the MaSN

is calculated annually in line with the central budget which is available to DfE for the purposes of HE provision.

Teaching grant funding has been subject to budgetary movement, due to the available funding, with HE Institutions (HEIs) having to absorb pay, price and pension pressures. Teaching grant funding provided to HEIs in the academic year 2018/19 was £119.8m, a decrease of £7m from the point of fee divergence with England in 2012. The MaSN over the same period decreased from 23,930 to 22,844, being 1,764 lower than a high of 24,608 in 2014. For the Academic Year 2019/20, DfE has increased the MaSN by 440 places.

#### **Numbers of NI domiciled students enrolled at UK HEIs, by location of institution<sup>2</sup>**

<b>Year</b>	<b>NI</b>	<b>GB</b>	<b>OU*</b>	<b>Total</b>
<b>2008/09</b>	41,700	16,345	4,220	62,265
<b>2009/10</b>	43,670	16,345	4,625	64,635
<b>2010/11</b>	43,960	16,730	4,865	65,555
<b>2011/12</b>	43,260	17,510	4,820	65,590
<b>2012/13</b>	43,380	16,570	4,445	64,400
<b>2013/14</b>	44,140	16,290	4,140	64,570
<b>2014/15</b>	44,295	15,870	3,800	63,965
<b>2015/16</b>	43,415	16,450	3,740	63,600
<b>2016/17</b>	42,505	16,955	3,610	63,070
<b>2017/18</b>	41,755	17,440	3,735	62,930

\* Open University. May include NI students who are registered with the OU in Great Britain rather than Northern Ireland

<sup>2</sup> Data taken from 'Enrolments at UK Higher Education Institutions: Northern Ireland Analysis 2017/18'. <https://www.economy-ni.gov.uk/publications/enrolments-uk-higher-education-institutions-northern-ireland-analysis-201718>

### Numbers of enrolments at NI HEIs, by student domicile<sup>3</sup>

Year	NI	GB	RoI	Other EU	Non EU	Total
<b>2008/09</b>	45,910	1,305	3,240	445	1,550	52,450
<b>2009/10</b>	48,285	1,510	3,800	410	1,605	55,600
<b>2010/11</b>	48,820	1,445	4,285	370	1,945	56,860
<b>2011/12</b>	48,075	1,825	3,520	355	2,950	56,720
<b>2012/13</b>	47,820	2,000	2,835	340	3,160	56,155
<b>2013/14</b>	48,275	2,170	2,420	330	3,200	56,395
<b>2014/15</b>	48,090	2,825	2,345	385	2,795	56,445
<b>2015/16</b>	47,150	2,930	2,195	375	2,585	55,245
<b>2016/17</b>	46,110	3,160	2,095	385	2,815	54,570
<b>2017/18</b>	45,490	3,205	2,120	445	3,200	54,460

These figures indicate that a significant proportion of NI domiciled HE students study elsewhere in the UK. However, whilst the number restrictions imposed by the NI MaSN may be responsible for a small proportion of NI students needing to move away from NI to elsewhere in the UK to undertake HE studies, previous research<sup>4</sup> suggests that there are instead a variety of educational and socio/political reasons for which NI students actively choose to study elsewhere – a phenomenon which existed before the introduction of the MaSN in 1994.

DfE commissioned Ulster University's Economic Policy Centre to develop a 'Skills Barometer' model to estimate the future skills needs and skills gaps by qualification level, subject area and

<sup>3</sup> Data taken from 'Enrolments at UK Higher Education Institutions: Northern Ireland Analysis 2017/18'. <https://www.economy-ni.gov.uk/publications/enrolments-uk-higher-education-institutions-northern-ireland-analysis-201718>

<sup>4</sup> <https://www.economy-ni.gov.uk/sites/default/files/publications/del/Analysis%20of%20higher%20education%20students%20studying%20in%20NI%20and%20GB.pdf>

sector for the Northern Ireland economy. The project was originally commissioned in 2015, and has been updated at 2-year intervals. The Skills Barometer will continue to be relevant in shaping policy across all areas of skills provision, as it allows Government to allocate its funding in a more efficient manner, to meet business needs and provide the evidence for more flexible responses to future skills needs. The current iteration of the Skills Barometer<sup>5</sup> indicates that National Qualification Framework (NQF) Level 6 and above skills are, in general, only marginally undersupplied (by 210 places). However, there is an imbalance across individual subject areas. What this suggests is that the Northern Ireland economy does not need significant additional levels of graduates emerging from the HE system. Instead, what the Skills Barometer indicates is that a small increase in the overall quantum is required, but that a realignment of subject-specific graduates is more important to meeting local, future economic need. However, it should be noted that those subjects which are currently under-supplied (Engineering & Technology; Mathematical & Computer Sciences) typically cost more to deliver than those subjects which are over-supplied (Social Studies; Education).

In terms of the overall quantum of graduates from NI HE Institutions, the evidence suggests that to meet either economic demand, or demand at the level of the NI domicile to study locally, then there is not likely to be a significant increase to the MaSN required. However, given that the level of the MaSN is directly linked to the available central budget, further increases to the MaSN cap will not resolve these issues, unless accompanied by a concomitant increase in HE grant funding. The Higher Education Strategy for Northern Ireland, *Graduating to Success*, outlined the need for HE funding in NI to be flexible in order to meet with changes in demographics and demand. As a means of addressing this, the Strategy committed DfE to reviewing the MaSN, and to developing a new funding model. However, in the current restricted funding environment, and in the absence of an Assembly and Minister for the Economy, DfE does not have the budget for significant increased DEL funding, nor the authority to instigate significant changes to how the HE sector is funded.

### **The establishment of a university whose principal campus is in Derry/Londonderry**

Whilst the Northern Ireland Department for the Economy (DfE) has policy responsibility for higher education in Northern Ireland, universities themselves are autonomous bodies. As such, it is for any university (whether prospective, or existing) to decide where to base any new campus. DfE has not undertaken any exploratory work in relation to the establishment of a new university in Derry/Londonderry, as it has no locus to do so.

---

<sup>5</sup> <https://www.economy-ni.gov.uk/publications/northern-ireland-skills-barometer-2019-update>

Educational institutions requesting the right to use the 'university' title in Northern Ireland, which is an otherwise protected term under the Companies Act 2006, should apply directly to DfE. The awarding of 'university' title can only be done via a Royal Charter or through primary legislation (through the NI Assembly). In either scenario, DfE will seek advice from the Quality Assurance Agency (QAA). Degree Awarding Powers can only be granted by Royal Charter or Act of Parliament (including by the NI Assembly). Applications for a Royal Charter should be made to the Privy Council. It should be noted that before an application for Degree Awarding Powers is made, the institution must be able to demonstrate a track record of at least 5 years of delivering eligible courses satisfactorily (as assessed by the QAA). Additionally, the institution must be operating physically in Northern Ireland. Applicants should, in the first instance, approach the QAA for advice and guidance. In assessing applications for either of the above, DfE may seek the views of the Office for Students (OfS) in addition to the advice received from the QAA.

The Government is not aware of any live proposals to establish any new University Facility in Derry / Londonderry but it is aware of the proposals of the existing Ulster University to expand and, separately, to establish a new Graduate Medical School in Derry/Londonderry.

### **Expansion of the existing Ulster University campus in Derry/Londonderry**

In 2016, DfE received a joint proposal from Ulster University (UU) and Derry City and Strabane District Council for a scaled expansion of the University's Magee Campus to 9,400 Full Time Equivalent (FTEs), from its existing 4,062, representing an additional 2,636 full-time and 1,242 part-time undergraduate places, and 636 full-time and 824 part-time postgraduate places, as well as an additional 750 FTEs delivered via the North West Regional College (NWRC). The proposition was the delivery of an increased supply of skilled graduates, together with regional benefits that could flow to the North West.

The proposal presented had significant funding consequences from a capital infrastructure perspective (c.£300m) as well as significant and from a resource funding implication/perspective. The proposal would also require HE to be placed on a sustainable footing, comparable with England, from which expansion would take place. There would also be, as with any requested expansion or increase to student numbers, resource grant consequences of funding the proposed additional places at UU and NWRC, and associated student support costs (c.£111m). The £300m capital cost was highly indicative and based on

an assumed cost per square metre per student. DfE undertook initial work to determine how it would look at the case, if there was an agreement on how the sector as a whole could be sustainably funded, as any expansion in student numbers would not make sense without this in place.

In February 2019, DfE wrote to, and is awaiting a response from, UU requesting that an update be made to the case to consider:

- a more accurate assessment of capital need, which was very theoretical in the original proposal and created a significant cost requirement;
- whether it remains the position that additional and existing places should be funded at a 'sustainable' level commensurate with England;
- a review of the number and subject level mix of additional students required to ensure an underpinning alignment with graduate/postgraduate economic need in subject areas proposed;
- the phasing of the project to assess if there are more suitable break points in the proposal and a potential to scale any expansion both in terms of student numbers and capital development; and,
- the rationale for locating additional higher education places in the Magee Campus, as opposed to other geographical locations with further and more detailed explanation in relation to sub-regional economic benefits.

This information will be critical to enabling a strategic approach to HE provision and in feeding into any final business case that might be put forward for this proposal.

### **Ulster University Graduate Medical School in Derry/Londonderry**

The Ulster University has been for some time considering the development of a Graduate Medical School to be located in Derry/Londonderry and this project proposal features heavily in the Derry City & Strabane District Council's economic regeneration plans for the region. With the support of the Local Council the University partners have been engaging with a number of NI Departments in an effort to progress this proposal.

The Northern Ireland Department of Health (DoH) is acutely aware of the pressures on the medical workforce across Health and Social Care (HSC) and its key role in leading the transformation of services set out in Delivering Together. Accordingly, DoH commissioned a Medical School Places Review, led by Professor Keith Gardiner, to determine the optimum

number of medical school places that Northern Ireland requires per year. His report, published on 11 January 2019, raises challenging, long-term, strategic and cross-cutting questions with major financial implications. Amongst other issues, it recommends expanding medical training places by at least 100 per year, potentially costing up to an additional £30m per year when fully implemented. This report is a key consideration of the University of Ulster in putting forward its proposal for a medical school in Derry/Londonderry. While DoH has been assisting UU in the development of its Outline Business Case (OBC) for a Graduate Entry Medical School at Magee Campus, this is separate from any decision on medical student expansion in Northern Ireland. Feedback was provided on 13 July 2019 to the fourth iteration of the OBC.

Any commissioning of additional medical places for Northern Ireland must address comprehensively the full range of available options, with a particular focus on the assessment of value for money and affordability for health and social care.

For example, rather than simply expanding medical student numbers, it will be important to explore lower-cost measures likely to increase the supply of medics over the short-term and which enhance and maximise the significant investment currently being made in undergraduate medical education.

DoH is developing a business case to consider these matters. Given the cross-cutting nature and potential for significant associated costs with the Medical School business case, the DoH Permanent Secretary has advised that any decision on this or other long-term options, must be considered by Northern Ireland Executive Ministers.

The provision of HE places in NI or the establishment of a medical school in Derry/Londonderry is a devolved matter, however, the Derry & Strabane City District Council is presently engaging with UKG to consider if this project would be eligible for UKG funding under the City Deals programme or the Integrated Education Fund. The medical school is one part of a wider package of proposals currently under consideration with other draft proposals included that could complement existing specialties at the Magee Campus. The development of the Council's final bids for a City Deal from the Inclusive Future Fund is still ongoing and as of August 2019, there has been no official final bid submitted for either funding stream to UKG, including no formal bid to provide funding to a Derry/Londonderry medical school.

### **3(8) Protections for veterans: presumption of non-prosecution**

This report is based on information primarily provided by the Northern Ireland Office.

Section 3 (1) of the Northern Ireland (Executive Formation etc) Act 2019 requires the Secretary of State to publish and lay before both Houses of Parliament a report on progress made towards forming an Executive and other matters.

This section of the report is made in accordance with section 3(8) of that Act which states:

The report under subsection (1) must include a report on progress made towards protecting veterans of the Armed Forces and other security personnel from repeated investigation for Troubles-related incidents by introducing a presumption of non-prosecution, in the absence of compelling new evidence, whether in the form of a Qualified Statute of Limitations or by some other legal mechanism.

### **Investigations of Troubles related deaths: current position**

Investigations (and potential prosecutions) of Troubles related deaths are the responsibility of several organisations based in Northern Ireland, each of which is operationally independent of both the NI Executive and the UK Government.

#### *Police investigations*

The Police Service of Northern Ireland (PSNI) has a duty to review historical cases and, where credible investigative opportunities are identified, conduct further investigations. The legacy of the Troubles means that the number of historical cases for which the PSNI has responsibility is on a different scale from that faced by other UK Police Forces. This work is taken forward by the PSNI's Legacy Investigation Branch (LIB).

#### *Ombudsman investigations*

While the core function of the Office of the Police Ombudsman for Northern Ireland (OPONI) is to investigate present-day complaints about the conduct of police officers, it is also charged with investigating alleged police misconduct which took place during the Troubles. The Police Ombudsman's Historical Investigations Directorate was established in 2010 to investigate



incidents in which members of the RUC may have been responsible for deaths or serious criminality in the past, and in particular between 1968 until 1998. It also receives wider complaints of a grave or exceptional nature from members of the public about police conduct during this period, including allegations of police involvement in murder, attempted murder, as well as conspiracy and incitement to murder. The Directorate has no legal power to investigate matters related to the conduct of the military or of the security services.

### *Coronial inquests*

The Coroners Service for Northern Ireland (CSNI) investigates deaths of individuals which appear to have happened in sudden or unexplained circumstances. The holding of an inquest is at the discretion of the Coroner but the views of the family can be made known to the Coroner and will be considered before any decision is made. The current legacy inquest caseload comprises of 54 cases relating to 95 deaths. This includes 3 cases, relating to 3 deaths, referred to the Coroner by the Attorney General for Northern Ireland since December 2018. As announced by the NI Department of Justice in February 2019, a new legacy unit is being set up within the Coroners Service with the aim of bringing these outstanding legacy inquests to a conclusion within a five year period (starting from April 2020) once the necessary resources are in place.

### *The Public Prosecution Service*

Prosecutorial decisions, including those related to Troubles related cases, are made independently by the Public Prosecution Service (PPS) for Northern Ireland, headed by the Director of Public Prosecutions for Northern Ireland (DPPNI). As the principal prosecuting authority in Northern Ireland, the PPS produces guidance on how it takes decisions as to prosecution in cases received by investigating agencies including the Police Service of Northern Ireland (PSNI).

When taking a decision on whether to prosecute, Public Prosecutors follow current guidelines as set out in the 2016 Code for Prosecutors which was issued by the DPPNI under section 37 of the Justice (Northern Ireland) Act 2002. Prosecutions are initiated or continued by the PPS only where it is satisfied that the Test for Prosecution is met. This is a two stage test and each stage of the test must be considered separately and passed before a decision to prosecute can be taken. The Evidential Test must be passed first before the Public Interest Test is

considered. If this is also passed, the Test for Prosecution is met. Further detail about both the Evidential Test and the Public Interest Test is set out in the 2016 Code for Prosecutors<sup>6</sup>.

In relation to the Public Interest Test, it is not the case that all offences for which there is sufficient evidence must be prosecuted – prosecutors must exercise their discretion in taking a decision on whether a prosecution is required in the public interest and for the benefit of society as a whole. Finally, paragraph 4.11 of the Code for Prosecutors also sets out that: “Broadly, the presumption is that the public interest requires prosecution where there has been a contravention of the criminal law. This presumption provides the starting point for consideration of each individual case. In some instances the serious nature of the case will make the presumption a very strong one. However, there are circumstances in which, although the evidence is sufficient to provide a reasonable prospect of conviction, a court based outcome is not required in the public interest”.

The public interest considerations which may properly be taken into account when deciding whether the public interest requires prosecution will vary from case to case. In each case where the Evidential Test has been passed, the prosecutor will weigh the relevant public interest factors that are applicable.

### *International legal obligations*

Northern Ireland’s devolved justice and policing framework is also underpinned by the UK’s wider international legal obligations, particularly the European Convention on Human Rights (ECHR). The UK remains committed to membership of the ECHR and maintaining our leading role in the promotion and protection of human rights, democracy, and the rule of law.

### **Steps being taken to reform the current system**

The Government will always be unequivocal in admiration for the Armed Forces who upheld the rule of law and were themselves accountable to it. Their efforts, and in so many cases, sacrifices, helped ensure that the future of Northern Ireland will only ever be decided by democracy and consent.

---

<sup>6</sup> 2016 Code for Prosecutors:  
[https://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Publications/Prosecution%20Policy/Code%20for%20Prosecutors%20\(Interactive\)%202016.pdf](https://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Publications/Prosecution%20Policy/Code%20for%20Prosecutors%20(Interactive)%202016.pdf)

Alongside its absolute respect for and gratitude to the Armed Forces, the Government is also clear that they are not above the law. It is right that whenever the Armed Forces embark on operations, be it Operation Banner or operations overseas, they are subject to the criminal law of England and Wales, as well as international humanitarian law where applicable. Our service men and women are required to conform to the highest standards of personal behaviour and conduct. And when they fall short they must be held to account. Justice must be served.

There is broad agreement from the UK Government and among the Northern Ireland political parties that the current system for investigating the past in Northern Ireland needs to change, to provide better outcomes for victims and survivors and for veterans of the Armed Forces and security service personnel. The UK Government remains fully committed to finding a solution which reforms the current processes for dealing with the legacy of the Troubles - this means meeting the needs of victims and survivors, and to ensure that our veterans of the Armed Forces and security service personnel are treated fairly while delivering compliance with the UK Government's domestic and international legal obligations.

The Government recently consulted on legislation to establish the 2014 Stormont House Agreement (SHA) institutions. This Agreement, between the UK Government, the Irish Government and the main parties in Northern Ireland, proposed a number of reforms to the current system to ensure a fair, balanced and proportionate approach. Over 17,000 responses to the consultation were received with the vast majority of respondents supporting the need to reform the current system into investigating the past in Northern Ireland.

The Ministry of Defence (MOD) launched a 12-week public consultation on 22 July seeking views on proposed legal protection measures for Armed Forces personnel and veterans serving in operations outside the UK. The consultation includes the proposal for a statutory prosecution for alleged offences committed on operations abroad over ten years ago because the law currently does not allow for lines to be drawn under allegations with any confidence. The measure would effectively raise the threshold to be applied by prosecutors when considering whether a prosecution is genuinely in the public interest; two options have been proposed for how such a measure could be enacted. Each of the proposals applies solely to events outside the UK, and does not therefore extend to cover the actions of Armed Forces personnel while deployed within the UK. The MOD will continue to feed into the next steps of the Northern Ireland Office's work on addressing Troubles-related legacy issues of Northern Ireland's past.

The UK Government recognises that the issue of historic investigations, be it related to operations during the Troubles or conflicts overseas, is a complex legal area and the subject of a range of strongly held views. There have also been a number of important interventions from a range of partners, including from the Defence Select Committee who have written extensively on this matter. It is vital that all groups with strongly held views continue to contribute to this vital work.

The Secretary of State for Northern Ireland will continue to work closely with the Northern Ireland parties, ministerial colleagues, Members of the UK Parliament, the Irish Government and key stakeholders on developing an improved system for dealing with the legacy of the Troubles. Any system will need to command support in Parliament, and broad consensus in Northern Ireland. In the event of a restored Executive, any legislation would seek the consent of the NI Assembly as many of these matters are devolved. In parallel, the Secretary of State for Defence will continue to work with partners in determining how best to deliver enhanced legal protections in relation to operations outside the UK and will set out the way forward once the current consultation exercise has concluded.

### **3(9) New prosecution guidance for Troubles-related incidents**

This report is based on information primarily provided by the Northern Ireland Office.

Section 3(1) of the Northern Ireland (Executive Formation etc) Act 2019 requires the Secretary of State to publish and lay before both Houses of Parliament a report on progress made towards forming an Executive and other matters.

This section of the report is made in accordance with section 3(9) of that Act which states:

The report under subsection (1) must include a report on progress made towards developing new prosecution guidance for legacy cases of Troubles related incidents by the Attorney General for Northern Ireland to take into account whether or not the person who allegedly committed an offence had the means to do so because that person had been lawfully supplied with a deadly weapon, with a presumption in favour of prosecuting in cases where a person who has allegedly committed an offence had the means to do so because that person had been unlawfully supplied with a deadly weapon.

#### Current legal position

The Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010 and the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 devolved responsibility for the vast majority of policing and justice matters in Northern Ireland.

The Justice (Northern Ireland) Act 2002 provided for the establishment of the Public Prosecution Service (PPS) for Northern Ireland - led by a Director of Public Prosecutions for Northern Ireland (DPP) - to exercise functions independently of any other person, including government and investigators (section 42(1)). The DPP is supported by the PPS Management Board in his leadership of the PPS and in reaching decisions as to the development and implementation of the Service and its proper governance.

Section 22 of the Justice (Northern Ireland) Act 2002 also provided for the appointment of an Attorney General for Northern Ireland (AGNI) to exercise functions independently of any other person (see section 22(5))<sup>7</sup>.

---

<sup>7</sup> The Justice (Northern Ireland) Act 2002: <https://www.legislation.gov.uk/ukpga/2002/26/part/2/enacted>

The DPP is not under the superintendence of the AGNI and acts independently (as set out in section 42). Under the Act, the DPP has a consultative relationship with the AGNI and the Advocate General for Northern Ireland in relation to reserved matters. This requires the DPP to consult both before issuing or making alterations to a code (under section 37); and before preparing his annual report on how he has exercised his functions during the financial year. The Act also enables the DPP and AGNI to consult with each other on any matter for which the AGNI is accountable to the Northern Ireland Assembly. The particular relationship between the DPP and the AGNI is an important feature of the devolution settlement in Northern Ireland.

### UK Government position

The Government remains committed to working with the Northern Ireland parties on addressing the pressing issue of legacy reform and welcomes all views and contributions on these important issues. Under the Justice (Northern Ireland) Act 2002, the AGNI does not superintend the DPP for Northern Ireland and therefore is not able to either issue prosecution guidance to the DPP or direct the DPP to issue such guidance. It is not within the UK Government's powers to direct the AGNI, recognising that under the Justice (Northern Ireland) Act 2002, justice is a devolved matter. The UK Government has no plans to alter the current division of responsibilities, and independence as between, the DPP and the AGNI.

Improving the current system for investigating the past in Northern Ireland remains the Government's priority - to provide better outcomes for victims and survivors and for veterans of the Armed Forces and security service personnel. That is why the UK Government will continue working with the Northern Ireland political parties, the Irish Government and the relevant Civil Service departments and independent judicial bodies to consider the issues raised in the recent legacy consultation and to take forward an approach which reforms the current processes for dealing with the legacy of the Troubles which is effective, legally robust and commands consensus.

### **3(10) Abortion law review**

This report is based on information provided by the Northern Ireland Office.

Section 3 of the Northern Ireland (Executive Formation etc) Act 2019 requires the Secretary of State to publish and lay before both Houses of Parliament a report on progress made towards forming an Executive and other matters.

This section of the report is made in accordance with section 3(10) of that Act which states:

The report under subsection (1) must include a review of the current legal framework on abortion in Northern Ireland with an analysis of how that framework could be amended by Parliament during the period when there is no Executive, subject to a sunset clause to respect devolution, in order to comply with the human rights obligations of the United Kingdom.

### **Overview**

The Belfast (Good Friday) Agreement of 1998, set out in Strand One that there would be an elected Assembly in Northern Ireland capable of exercising legislative and executive competence. This was implemented through the Northern Ireland Act 1998, which has been amended further since 1998. The Northern Ireland devolution settlement gives legislative competence in relation to transferred matters to the Northern Ireland Assembly. Schedules 2 and 3 to the Northern Ireland Act 1998 set out the ‘excepted’ and ‘reserved’ matters, with ‘excepted matters’ falling solely within the legislative competence of the UK Parliament; and ‘reserved matters’ generally being within the legislative competence of the UK Parliament, though the Northern Ireland Assembly may also legislate in those reserved areas with the consent of the Secretary of State for Northern Ireland. Other matters not listed in either Schedules 2 or 3 to the Northern Ireland Act 1998 are referred to as “transferred” (or devolved) matters. For those areas, the Northern Ireland Assembly has full legislative competence, and does not require consent from the UK Government or Parliament to legislate. The UK Parliament retains competence in relation to transferred matters<sup>8</sup>, but that is subject to convention discussed further below.

---

<sup>8</sup> See section 5(6) of the Northern Ireland Act 1998.

Under the Northern Ireland devolution settlement, the following areas, relevant to the provision of abortion services, are “transferred matters” and therefore devolved in Northern Ireland: health and social services; equal opportunities (including as provided for in equality law); and justice and policing. As a result, any questions of reform or legislative changes to the law or policy in these areas are matters that are within the competence of the Northern Ireland Assembly and Executive.

### **Current Northern Ireland law**

There is no statutory framework in Northern Ireland allowing for lawful abortion. Following previous court judgments, there is a limited exemption for an intervention to a pregnant woman that has the intent to cause a miscarriage, where this is carried out with the intention of protecting the woman against physical or mental health issues that are ‘real and serious’ and ‘permanent or long term’.

Under the Offences Against the Person Act 1861 (which also applies in England and Wales) it is a criminal offence for any woman, being with child, unlawfully to do any act with intent to procure a miscarriage; and for any person unlawfully with intention to do an act to procure a miscarriage of any woman; or to unlawfully supply or procure drugs or instruments to cause an abortion. More specifically, sections 58 and 59 of the Act provides that:

#### **Section 58 - Administering drugs or using instruments to procure abortion.**

Every woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable . . . to be kept in penal servitude for life.

#### **Section 59 - Procuring drugs, &c. to cause abortion.**

Whosoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be



not with child, shall be guilty of a misdemeanour, and being convicted thereof shall be liable . . . to be kept in penal servitude.

Section 25(1) of the Criminal Justice Act (Northern Ireland) 1945 also makes it a criminal offence for anyone to assist or wilfully act to ‘destroy the life of a child then capable of being born alive’, except where the purpose is to preserve the life of the mother ‘in good faith’<sup>9</sup>.

Common law has determined that if a doctor is of the reasonable opinion that the probable consequence of the continuation of the pregnancy is to make a woman a “physical or mental wreck” that will have “real and serious” effects that would be “permanent or long term” it can be construed that the doctor is “operating for the purpose of preserving the life of the woman”<sup>10</sup>.

### **Amending the legislative framework in the UK Parliament**

The UK Government and the Northern Ireland Executive have agreed a Memorandum of Understanding<sup>11</sup> setting out the principles that underlie relations between them<sup>12</sup>. In terms of legislation, the UK Government operates in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature.

The Government’s preference therefore remains that any change to law on abortion, a sensitive devolved issue, is taken forward by a restored Executive and functioning Assembly. It remains the hope that devolved government can be restored at the earliest opportunity through the current talks process.

However, the Government recognise the strength of feeling on the issues of abortion law reform, demonstrated by Parliament through both the inclusion of this additional reporting requirement, as well as a majority of MPs voting through the addition of section 9 to the Northern Ireland (Executive Formation etc) Act 2019 which places a duty on the Government to regulate to provide for access to abortion in Northern Ireland. This duty will come into effect if the Executive is not restored by 21 October 2019, with the regulations required to be in place by 31 March 2020.

---

<sup>9</sup> The Act provides that evidence that a woman had been pregnant for a period of 28 weeks is prima facie proof that she was at that time pregnant of a child capable of being born alive. This replicates the Infant Life Preservation Act 1929 for England and Wales.

<sup>10</sup> *R v Bourne* [1939] 1 KB 687 and subsequent cases

<sup>11</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/60983/post-devolution-primary-ni.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60983/post-devolution-primary-ni.pdf)

<sup>12</sup> The same arrangements are in place in relation to Scotland and Wales in relation to the legislation for devolved matter.

We recognise there are a range of sensitive policy issues that need to be carefully worked through to implement the recommendations of the 2018 UN CEDAW Report, *Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*. It is acknowledged that there is existing evidence to inform this type of law reform, including international legal models, additional international human rights and other reports, recent domestic legal judgments, and domestic parliamentary and other inquiries and reports, and these materials are being carefully considered and analysed by officials. However, these materials do not provide a clear path forward in terms of the regulations and non-legislative measures that need to be delivered to implement the CEDAW recommendations, and therefore much further work is required before we are in a place to deliver on this duty if it comes into effect. That is why officials are working to take all necessary steps between now and 21 October 2019, to ensure that, if the Executive has not been restored by that date, we are ready to put in place measures for the interim period, as well as consulting and preparing the necessary regulations and other measures ready to come into effect by 31 March 2020.

In terms of the interim period, if the duty to regulate to implement the CEDAW recommendations comes into effect, as section 9(2) of the Act provides, sections 58 and 59 of the OAPA will be repealed from 22 October 2019. Further, a criminal moratorium will also come into effect on that date, meaning that no investigation may be carried out, and no criminal proceedings may be brought or continued, in respect of an offence under those sections under the law of Northern Ireland (whenever committed). Careful consideration is being given now to how we manage this interim period where the criminal law in Northern Ireland falls away, but services are unlikely to be widely available given the policy and delivery considerations required in the following months to implement the new framework by 31 March 2020. This includes considering what guidance can be put in place in Northern Ireland to clarify the new state of the law,, and ensuring the Government scheme that currently operates in England continues to be as accessible as possible for those women and girls from Northern Ireland seeking to access it in the interim period. Ensuring the health and safety of women, and clarity for medical professionals, will be at the forefront of our approach at each stage of the process.

### **Update on progress**

Since the Northern Ireland (Executive Formation etc) Act 2019 gained Royal Assent, good progress has been made on the preparation of regulations including, but not limited to:

- Establishing cross-departmental teams to work at pace ready to deliver if the duty comes into effect on 22 October 2019 if there is no restored Executive by this time
- Having discussions with the Northern Ireland Civil Service to seek factual advice and input to inform UK Government-led policy formulation work
- Initial scoping of how best to deliver the regulations
- Reviewing international models where relevant, and
- Developing engagement and communications plans ready for if the duty comes into effect.

The Secretary of State for Northern Ireland, the Rt Hon. Julian Smith MP, has also written to the Northern Ireland Human Rights Commission (NIHRC) to seek its advice on the implementation of the duty under section 9 Northern Ireland (Executive Formation etc) Act 2019, should it come into effect. The NIHRC has confirmed that it will be providing initial advice by 17 September 2019.

The Government will also update the House in the next month on any implications of any legal judgments or other relevant developments on these issues. This report will also include an update on any advice provided by the Northern Ireland Human Rights Commission to the Secretary of State for Northern Ireland in accordance with its statutory functions.

CCS0819901692  
978-1-5286-1579-2