EXPLANATORY MEMORANDUM TO

THE NORTHERN IRELAND TROUBLES (LEGACY AND RECONCILIATION) ACT 2023 (REMEDIAL) ORDER 2025

[2025] No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by The Northern Ireland Office and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Human Rights.

2. Declaration

2.1 Rt. Hon. Hilary Benn, Secretary of State at the Northern Ireland Office, confirms that this Explanatory Memorandum meets the required standard.

2.2 Sharon Carter, Deputy Director for Legacy at the Northern Ireland Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Steven Squire-Law at the Northern Ireland Office (email: legacy.group@nio.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This order will remove a number of provisions from the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 ('the Act') which were found – by the High Court in Northern Ireland and the Court of Appeal in Northern Ireland – to be incompatible with the European Convention on Human Rights. More details on the findings on the court are to be found in Section 6.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Northern Ireland, England, Wales, and Scotland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Northern Ireland, England, Wales, and Scotland.

5. Policy Context

What is being done and why?

5.1 The Act was introduced by the previous government in June 2022 and received Royal Assent in September 2023. It stopped Troubles related criminal investigations, civil cases and inquests and, in their place, created a new independent body - the Independent Commission for Reconciliation and Information Recovery ('the ICRIR')

- which is tasked with carrying out reviews of Troubles related deaths and serious injuries.

What was the previous policy, how is this different?

5.2 The High Court in Northern Ireland, in Dillon, McEvoy, McManus, Hughes, Jordan, Gilvary, and Fitzsimmons Application and In the matter of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 and the Secretary of State for Northern Ireland [2024] NIKB 11 declared the following provisions of the Act incompatible with Convention rights:

Sections 7(3), 12, 19 to 22, 39 and 42(1) – provisions on immunity from prosecution;

Section 8 - inadmissibility of material provided to, or obtained by, the ICRIR in civil and coronial proceedings;

Section 41 - prohibition of criminal enforcement action for other offences;

Section 43(1) - prohibition on continuing certain civil actions brought between May 2022 and November 2023).

5.3 So far as section 43 is concerned, the Court of Appeal went further than the High Court and found that section 43(2) was also incompatible with Convention rights. This is the prohibition on bringing certain civil actions after November 2023.

5.4 The Government is committed to repealing and replacing the Legacy Act, and to implementing legacy mechanisms that are compliant with human rights and are supported by communities across Northern Ireland. It is absolutely clear that changes to the Act are necessary to ensure it is human rights compliant, and the Government is committed to bringing forward a remedial order under the Human Rights Act as soon as possible, to give more families confidence to engage with the ICRIR.

5.5 The Act halted Troubles-related criminal investigations, prosecutions, civil cases and some inquests. Civil cases were halted from the point at which the Bill was introduced in May 2022. In their place, the Act established the ICRIR as the sole body responsible for investigating Troubles-related deaths and serious injuries; its primary role being to recover as much information as possible. As part of its range of powers, the ICRIR could grant immunity from prosecution for Troubles-related offences if individuals provided information that was deemed - by the ICRIR - to be true to the best of their knowledge and belief.

5.6 This Order would make amendments to the Act to remove the provisions listed above which have been found by the High Court in Northern Ireland and the Court of Appeal in Northern Ireland to be in breach of the ECHR (and make necessary consequential changes).

6. Legislative and Legal Context

How has the law changed?

6.1 The proposed Remedial Order would amend the Act to ensure that certain provisions which have been found by the High Court in Northern Ireland and the Court of Appeal in Northern Ireland to be in breach of the ECHR are removed.

The High Court in Northern Ireland made declarations pursuant to section 4 of the Human Rights Act 1998 (c. 42) that:

(a) sections 7(3), 12, 19, 20, 21, 22, 39, 41 and 42(1) (relating to immunity from prosecution and the prohibition of criminal enforcement in respect of certain offences) are incompatible with articles 2 and 3 of the Convention;

(b) section 8 (relating to the exclusion of evidence in civil proceedings) is incompatible with articles 2, 3 and 6 of the Convention;

(c) section 43(1) (preventing the continuation of certain civil actions that were brought on or after 17th May 2022) is incompatible with article 6 of the Convention;

6.2 In addition, on section 43, the Court of Appeal in Northern Ireland found that subsection (2) (preventing the bringing of certain civil actions on or after 18th November 2023) is also incompatible with article 6 of the Convention.

6.3 Article 2 of this Order removes the provisions of the Act relating to immunity from prosecution. It also makes amendments to other provisions of the Act consequential on the omission of the immunity provisions.

6.4 Article 3 removes section 8 of the Act, which provides for the inadmissibility in certain proceedings of material obtained or produced by the ICRIR in the exercise of its functions. The ICRIR is established by, and its functions are set out in, section 2 of the Act.

6.5 Article 4 removes section 43 of the Act, which prohibits (i) the continuation of certain civil actions which were brought on or after 17th May 2022, being the date of the Act's first reading as a Bill in the House of Commons, and (ii) the bringing of certain civil actions on or after the day the section came into force. Consequential to that, it removes all of Schedules 9 and 10, and Part 2 of Schedule 12, from the Act.

6.6 Article 5 introduces the Schedule, which makes amendments to various other enactments consequential on the amendments made by articles 2 and 4.

Why was this approach taken to change the law?

6.7 A Remedial Order is an order made under section 10 of the Human Rights Act that amends primary or subordinate legislation that has been found by domestic courts to be incompatible with Convention rights. Although the provisions declared incompatible with the ECHR by the High Court in Northern Ireland have also been disapplied, the Government considers it important to remove all these provisions from the statute book swiftly.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Government has not conducted a separate consultation exercise as it would not be proportionate to do so for targeted amendments which are required to implement court judgments.

8. Applicable Guidance

8.1 The Government will not be publishing guidance on this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because this Order is required to implement court judgments.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public, private or voluntary sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This Order is laid pursuant to the power in section 10 of the Human Rights Act 1998 and will be of special interest to the Joint Committee on Human Rights.

12. European Convention on Human Rights

12.1 The Secretary of State for Northern Ireland has made the following statement regarding Human Rights:

"In my view the provisions of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (Remedial) Order 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").