EXPLANATORY MEMORANDUM TO

THE INDEPENDENT COMMISSION FOR RECONCILIATION AND INFORMATION RECOVERY (HOLDING AND HANDLING OF INFORMATION) REGULATIONS 2024

2024 No. 500

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 Statutory Instruments.

2. Declaration

2.1 The Rt Hon Steve Baker MP, the Minister of State at the Northern Ireland Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Jack McElligott, Deputy Director, Independent Commission for Reconciliation and Information Recovery Programme Secretariat, Data & Information Security Policy Team, at the Northern Ireland Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Rachel Roberts at the Northern Ireland Office, Telephone: 07966304212 or email: icririnformationregulations@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 The legislation requires the Independent Commission for Reconciliation and Information Recovery ("the ICRIR"), which is established by the Act, to put in place a policy document on the holding and handling of information by it. In addition, the legislation requires the ICRIR to appoint a person or persons to conduct an annual review of its policies and procedures for the holding and handling of information. It also allows the ICRIR to request assistance in relation to the holding and handling of information by it. Finally, it provides for notifications to be given by the ICRIR in relation to the sharing of information by it.

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 England and Wales, Scotland and Northern Ireland.

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

5. Policy Context

What is being done and why?

5.1 The ICRIR was legally established as a new and independent public body on 1 December 2023, when the relevant provisions of the Act were commenced. The ICRIR has been set up to find answers to questions individuals and families have relating to deaths and serious injuries which occurred during the Troubles.

5.2 Section 34 of the Act states that the Secretary of State may, by regulations, make provision about the holding and handling of information by the ICRIR.

5.3 The regulations provide additional detail to that which is in the Act and ensures that the ICRIR will build and develop its information systems and policies from the outset in-line with government approved standards, to ensure they are as secure as possible.

5.4 The ICRIR will obtain and hold un-redacted information (including that of a sensitive nature) from a range of stakeholders including the intelligence community, relevant authorities (as defined in section 60 of the Act – it includes police forces and police oversight bodies) and members of the public engaging with the ICRIR. Government and those sharing information with the ICRIR require assurances that any information provided will be held and handled securely by the ICRIR.

5.5 As the ICRIR is a new and independent body with no prior direction relating to this area, it is important that this legislation is put in place to ensure that the ICRIR has an agreed framework to work within.

5.6 Based on the fact that we received no public responses to the consultation, the degree of public interest in the legislation is minimal.

What was the previous policy, how is this different?

5.7 As the ICRIR is a new body there was no previous policy in relation to how the ICRIR should hold and handle information.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 34 of the Act allows the Secretary of State to make provision about the holding and handling of information by the ICRIR by regulations.

6.2 The legislation requires the ICRIR to put in place a policy document articulating its policies and procedures in relation to the holding and handling of information by it.

6.3 The legislation states that the policy document must specifically detail: how the ICRIR will securely access information held by others (including information which is to be transferred to the ICRIR); the secure receipt of information being transferred to the ICRIR; the secure retention of information by the ICRIR; the secure destruction or transfer of information which is to cease to be held by the ICRIR; and, the management and investigation of any breaches of the ICRIR's policies and procedures in relation to the holding and handling of information.

6.4 The legislation obligates the ICRIR to have regard to, and insofar as possible reflect the requirements of, specific government security policies and standards when drafting the policy document.

6.5 The legislation requires the ICRIR to publish the policy document at the same time as it publishes its first annual report, and to keep it under review and update it as required.

6.6 The legislation requires the ICRIR to submit to an annual external review of the ICRIR's policies and procedures in relation to the holding and handling of information. A person conducting such a review will have to produce a report for the ICRIR's Chief Commissioner and the ICRIR will have to have regard to it.

6.7 The legislation allows the ICRIR to request assistance from relevant authorities (as defined in section 60 of the Act) in holding or handling information. A relevant authority would not be obligated to provide the requested assistance but would be obligated to respond to a request and provide reasons if they are unable to assist the ICRIR.

6.8 The legislation sets out that where the ICRIR provides third parties with a draft report or material under section 16 of the Act (consultation on reports), the ICRIR must notify the recipient that the report or material is being provided to them in confidence for the sole purpose of making representations. Where the ICRIR otherwise discloses information to a person, it may notify the person that the information is being provided in confidence.

Why was this approach taken to change the law?

6.9 Section 34 of the Act allows the Secretary of State to make provision in regulations about the holding and handling of information by the ICRIR. This legislation is made in exercise of that power.

7. Consultation

Summary of consultation outcome and methodology

7.1 A four-week technical consultation ran from 27 February to 26 March 2024 and was made available on the NIO gov.uk page[1] with the option to respond via email and post.

7.2 A technical consultation was chosen as the legislation itself is technical in nature and narrow in its application, focusing on the operational delivery of the ICRIR with little impact on other stakeholders.

7.3 Anyone who wished to do so was able to respond to the consultation. We were interested in hearing views from the relevant authorities (as defined in section 60 of the Act) and anyone else who will provide information to the ICRIR.

7.4 The consultation took the form of a document summarising the content of the draft regulations. Respondents were asked to read the summary and provide any comments.

7.5 Two responses were received to the consultation; one from the Police Ombudsman for Northern Ireland ("the PONI") and one from the Information Commissioner's Office ("the ICO").

7.6 The PONI requested clarity on a definition used within the legislation.

7.7 The ICO raised general observations regarding data protection, which will be shared with the ICRIR.

[1] https://www.gov.uk/government/consultations/consultation-launched-on-the-proposed-regulations-about-the-holding-and-handling-of-information-by-the-independent-commission-for-reconciliation-and

7.8 The ICO also raised points specifically related to the legislation. Some of these points recommended that more specific language be used in the legislation or that extra detail be added to certain regulations.

7.9 After consideration, no changes have been made to the legislation. The legislation and the government standards and policies that the ICRIR is required to have regard to provide the required detail. In addition, the wording used in the legislation has been drafted in such a way that ensures flexibility for the approach of ICRIR, given it is an independent body.

7.10 A final point was made relating to the powers conferred in the Act to the Secretary of State, which was not within scope of the consultation.

7.11 The Government response to the consultation will be published before the legislation comes into force on 1 May 2024.

8. Applicable Guidance

8.1 The legislation does not implement or require guidance as it is sufficient direction for the ICRIR in itself.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

9.2 As the legislation is focussed on the internal operational setup and delivery of the ICRIR it is expected that there will be no additional financial impact from the legislation on the ICRIR as the approach will be absorbed into existing costs.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because the legislation is internally focussed on the operational delivery of the ICRIR only.

9.4 The legislation does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector because the legislation is internally focussed on the operational delivery of the ICRIR only.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Section 36 of the Act requires the Secretary of State to carry out a review of the performance by the ICRIR of its functions by the end of the third year of the period of its operations, and to lay a copy of the review before Parliament.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument was due to be laid on 10 April 2024. There was an issue with paragraph 1.1 of this explanatory memorandum which resulted with Parliament not accepting it for laying. Paragraph 1.1 had been drafted to say that the explanatory

memorandum was being laid by act when it was actually being laid by Command of His Majesty. This has now been rectified, but, regrettably means that the convention of laying 21 days before the instrument comes into force has not been met.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

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").