



Northern Ireland Troubles (Legacy and Reconciliation) Act 2023

2023 CHAPTER 41

PART 3

INVESTIGATIONS, LEGAL PROCEEDINGS ETC AND RELEASE OF PRISONERS

Interim custody orders

46 Interim custody orders: validity

- (1) This section applies in relation to the functions conferred by—
 - (a) Article 4(1) of the 1972 Order, and
 - (b) paragraph 11(1) of Schedule 1 to the 1973 Act,(which enabled interim custody orders to be made, and which are referred to in this section as the “order-making functions”).
- (2) The order-making functions are to be treated as having always been exercisable by authorised Ministers of the Crown (as well as by the Secretary of State).
- (3) An interim custody order is not to be regarded as having ever been unlawful just because an authorised Minister of the Crown exercised any of the order-making functions in relation to the order.
- (4) The detention of a person under the authority of an interim custody order is not to be regarded as having ever been unlawful just because an authorised Minister of the Crown exercised any of the order-making functions in relation to the order.
- (5) Subsections (3) and (4) do not limit the effect of subsection (2).
- (6) This section and section 47 apply only in relation to an exercise of any of the order-making functions which was conduct forming part of the Troubles (see, in particular, section 1(2)); and for this purpose any exercise of any of the order-making functions

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must be assumed to have been conduct forming part of the Troubles unless the contrary is shown.

(7) In this section and section 47—

“1972 Order” means the Detention of Terrorists (Northern Ireland) Order 1972 (S.I. 1972/1632 (N.I. 15));

“1973 Act” means the Northern Ireland (Emergency Provisions) Act 1973;

“authorised Minister of the Crown” means a Minister of the Crown authorised to sign interim custody orders—

(a) by Article 4(2) of the 1972 Order (in the case of such orders under that Article), or

(b) by paragraph 11(2) of Schedule 1 to the 1973 Act (in the case of such orders under that paragraph);

“interim custody order” means an interim custody order under—

(a) Article 4 of the 1972 Order, or

(b) paragraph 11 of Schedule 1 to the 1973 Act;

“order-making functions” has the meaning given in subsection (1).

47 Interim custody orders: prohibition of proceedings and compensation

(1) On or after the commencement day, a civil action may not be continued or brought if, or to the extent that, the claim that is to be determined in the action involves an allegation that—

(a) the person bringing the action, or another person, was detained under the authority of an interim custody order, and

(b) that interim custody order was unlawful because an authorised Minister of the Crown exercised any of the order-making functions in relation to the order.

(2) On or after the commencement day, criminal proceedings relating to the quashing of a conviction may not be continued or brought if, or to the extent that, the grounds for seeking to have the conviction quashed involve an allegation that—

(a) the person bringing the proceedings, or another person, was detained under the authority of an interim custody order, and

(b) that interim custody order was unlawful because an authorised Minister of the Crown exercised any of the order-making functions in relation to the order.

(3) If criminal proceedings relating to the quashing of a conviction are pre-commencement proceedings—

(a) subsection (2) does not apply to the criminal proceedings;

(b) section 46 does not prevent the court from quashing the conviction on the ground that an interim custody order was unlawful because an authorised Minister of the Crown exercised any of the order-making functions.

(4) On or after the commencement day, no compensation for a miscarriage of justice is to be paid in respect of a conviction that has been reversed solely on the ground that an interim custody order was unlawful because an authorised Minister of the Crown exercised any of the order-making functions.

(5) Regulations under section 58(2) which make provision that is consequential on section 46 or this section—

(a) may amend this Act (including this section);

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- (b) (whether or not they make such amendments) are subject to made affirmative procedure, unless they are instead made in accordance with section 58(5) (the affirmative procedure) or 58(6) (the negative procedure).

(6) In this section—

“commencement day” means the day on which this section comes into force;

“compensation for a miscarriage of justice” means compensation under section 133 of the Criminal Justice Act 1988;

“pre-commencement proceedings” means proceedings—

- (a) for which leave was given before the commencement day, or
- (b) which follow from a referral made by the Criminal Cases Review Commission before the commencement day.