



PRONI

Public Record Office of Northern Ireland



Department of
**Culture, Arts
and Leisure**
www.dcalni.gov.uk

MÁINNSTRÍE O
Fowkgates, Airts
an Aisedom
AN ROINN
Cultúir, Ealaíon
agus Fóillíochta

CONSULTATION PAPER

DRAFT STATUTORY RULES TO PROVIDE PRIVILEGED ACCESS TO INFORMATION CONTAINED IN COURT AND INQUEST FILES

Publication Date: 14 January 2016

Closing Date for Responses: 22 February 2016

INTRODUCTION

The Department for Culture, Arts and Leisure (DCAL) invites comments on the attached draft Rules (Appendix A) which it proposes to make under section 9 of the Public Records Act (Northern Ireland) 1923 (the Act). In finalising the Rules DCAL will take account of the comments it receives by **5.00pm on Monday 22 February 2016**.

Subject to the Act and the Rules, the procedure for requesting privileged access to information contained in a court or inquest file will be as directed by the Minister responsible for the Public Record Office of Northern Ireland (PRONI).

The Rules deal with matters of procedure in relation to requests for information recorded in court or inquest files; the use of information received under the Rules and the process for requesting the review of a decision to withhold information contained in a court or inquest file. The Rules also set out the arrangements for the return of information and make provisions for information to be recalled.

Please send comments by email to: proniconsultation@dcalni.gov.uk or alternatively by post to:

Statutory Rules Consultation Response
Public Record Office of Northern Ireland
2 Titanic Boulevard
Titanic Quarter
Belfast
BT3 9HQ

by 5pm on Monday 22 February 2016.

Please indicate clearly the **number of the Rule** to which each comment relates and say who the comments are being submitted by and/or on behalf of.

This document is available at:

www.dcalni.gov.uk/consultations

To discuss alternative formats, please use the following contacts:

Telephone: 028 9053 4842
E-mail: proniconsultation@dcalni.gov.uk
Post: Statutory Rules Consultation Response
Public Record Office of Northern Ireland
2 Titanic Boulevard
Titanic Quarter
Belfast
BT3 9HQ

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If you want any of the information in your response to be treated as confidential, please mark it clearly and explain why you regard it as confidential. DCAL cannot give any assurance that confidentiality can be maintained in all circumstances.

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PRIVILEGED ACCESS TO INFORMATION CONTAINED IN COURT AND INQUEST FILES

In January 2015 Carál Ní Chuilín MLA, the Minister for Culture, Arts and Leisure, introduced a process for the release of information recorded in court and inquest files held by the Public Record Office (PRONI) under the Public Records Act (NI) 1923.

Each year people write to PRONI seeking access to court and inquest files. They are searching for information so that they can understand more fully what happened to someone. People may seek information about themselves or about an incident that directly impacted them, details of which may be recorded in a court or inquest file held by PRONI. Asking for information can be a difficult experience particularly when the information may be sensitive and potentially distressing for people to learn.

PRONI releases information under the Data Protection Act 1998 (DPA), under the Freedom of Information Act 2000 (FOIA) and under the Public Records Act (NI) 1923. The process under the 1923 Act allows individuals privileged access to information in court and inquest files providing they sign an Undertaking that they will keep the released files confidential.

The process also provides for the legal representative of a person affected by an incident recorded in the file to have access to the information providing a partner or director of the legal practice signs an Undertaking to commit the firm to keep the released information confidential.

There is also provision to permit an employee of a charity who has been nominated by an eligible applicant to receive the information under the draft Rules, this is intended to enable those groups working with people affected by an incident recorded in a file to support the applicant through the process and to help them come to terms with the information they receive. The information released must not be shared with other employees of the charity; any other member of staff requiring access to the information must make a separate application and sign the Undertaking to keep the information confidential.

The draft Statutory Rules codify the process under the 1923 Act, it is compliant with the European Convention on Human Rights (ECHR) and the data protection principles set out in the DPA. The requested information which is provided on a confidential basis is compliant with the principles set out in the DPA and consistent with the ECHR. The recipient of the information released may use it to obtain legal advice (including seeking relevant expert opinion) or to make an application to the Attorney General for the exercise of his power under section 14(1) of the Coroners Act (NI) 1959.

The Rules place a duty on the Department responsible for PRONI to consult the relevant authorities, which are the Northern Ireland Office (NIO) and the Department of Justice (DoJ), as part of the process. This will enable the relevant authority to review the information contained in the court and inquest files to ensure compliance with the ECHR and the principles of the DPA before any information is provided to the applicant. Consultation with the NIO and DoJ will be undertaken prior to decision making at each stage of the process from initial release, during the review of a decision and in the event of a request to publish, all or part of, the information received.

While the majority of information will be made available to eligible applicants some information will be withheld such as names and/or identifying details about other people such as jurors or witnesses at a trial. There may be circumstances when an applicant or their representative may seek access to this information for particular reasons and there is provision under the draft Statutory Rules for these to be requested. The Minister responsible for PRONI will determine if the information recorded in a file may be released, in part or full, and any specific conditions that should be attached to the released information.

The draft Rules provide a mechanism for decisions to withhold information to be reviewed on the grounds that the process was not properly followed or that the Minister did not have all of the relevant information at the time of making the decision to withhold information contained in a court or inquest file.

There is also scope under the draft Rules for eligible applicants in receipt of information to make a request to the Minister to use the information in court or to publish the information. The Minister may also recall released information if, at any time, there is reasonable cause to believe that an applicant has failed to comply with the Undertaking or other conditions attached to the released information.

Existing systems which facilitate access to information under the DPA or FOIA will operate in tandem. Applicants requesting privileged access under the proposed Rules will be advised that these routes continue to offer an alternative for making requests for information contained in a court or inquest file.

EQUALITY & HUMAN RIGHTS CONSIDERATIONS

The draft Statutory Rules have been subject to an equality screening exercise to determine if there are any negative differential impacts on any of the groups identified at section 75 of the Northern Ireland Act 1998. The screening exercise, attached at Appendix B, concluded that there are no detrimental impacts. The Rules are consistent with the ECHR.

DCAL'S RULE MAKING POWERS

The Public Records Act (Northern Ireland) 1923 provides for DCAL to make Statutory Rules which deal with the management of the PRONI.

The proposed Rules, which will be made under Section 9 of the Act, will put in place a process to facilitate requests for privileged access to information contained in a court or inquest file.

STATUTORY RULES OF NORTHERN IRELAND

2016 No. XX

PUBLIC RECORD OFFICE

The Court Files Privileged Access Rules
(Northern Ireland) 2016

<i>Made - - - -</i>	XXXX
<i>Coming into operation</i>	XXXX

The Department of Culture, Arts and Leisure¹, makes the following Rules in exercise of the powers conferred by section 9(1) of the Public Records Act 1923² and now vested in it³.

Citation and commencement

1.—These Rules may be cited as The Court Files Privileged Access Rules (Northern Ireland) 2016 and shall come into operation on the day they are made.

Interpretation

2.—In these Rules—

“Charity” has the same meaning as in the Charities Act (Northern Ireland) 2008⁴.

“Court files” means records created by, or originating from, any court in Northern Ireland, including records relating to inquests.

“Incident” means an event or series of events which caused serious physical or psychological harm to a person.

“Minister” means the Minister responsible for the Public Record Office of Northern Ireland and “Department” shall be construed accordingly.

“Office” means the Public Record Office of Northern Ireland.

“Partner” includes “Director”.

“Relevant authority” means:

- a) In the case of a court file which has been transferred to the Office from a government department in the charge of a Minister of the Crown, the Minister of the Crown who appears to the Minister to be primarily concerned;
- b) In the case of a court file which has been transferred to the Office from a Northern Ireland Department, the Northern Ireland Minister who appears to the Minister to be primarily concerned; or
- c) In the case of a record transferred to the Office by any other person, the person who appears to the Minister to be primarily concerned.

¹ Established by the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I. 1)), Article 3(1)

² 1923 c.20 (N.I.)

³ S.R. 1999 No. 481 (N.I.) Article 6(a) and Schedule 4 Part I

⁴ 2008 c. 12 (N.I.)

“Solicitor” has the same meaning as in article 3 of the Solicitors (Northern Ireland) Order 1976.

Persons who may apply for court files

3.—(1) An application for a court file held by the Office will be accepted from a person (an “applicant”) who, at the time of the application, is aged eighteen years or older and who meets any of the following eligibility criteria—

- (a) a person who appears to the Department to be—
 - (i) a person who has sustained physical or psychological injury as a result of an incident which has been recorded in a court file;
 - (ii) a person who has been bereaved as a result of an incident which has been recorded in a court file; or
 - (iii) a person who has been seriously adversely affected, in a manner other than as described at (i) and (ii), as a result of an incident which has been recorded in a court file.
- (b) a solicitor acting on behalf of a person who meets any of the eligibility criteria set out at rule 3(1)(a).
- (c) an employee of a charity acting on behalf of a person who meets any of the eligibility criteria set out at rule 3(1)(a).

Applications for a court file

4.—(1) An application for a court file under these Rules shall—

- (a) be made in writing on the relevant form which shall be published from time to time via the official web-site for the Office;
- (b) be signed by the applicant; and
- (c) contain such particulars as the Department may reasonably require.

(2) An application for a court file under these Rules shall be made to the Office at the address specified on the form.

(3) The Department may request such further particulars as it requires.

(4) Where an application for a court file is made by, or on behalf of, a person who meets any of the eligibility criteria set out at rule 3(1)(a), that person must supply a completed form and provide a signed copy of the undertaking set out at schedule 1.

(5) Where an application for a court file is made by, or on behalf of, two or more persons acting together, each of whom meets any of the eligibility criteria set out at rule 3(1)(a), each person must supply a completed form and provide a signed copy of the undertaking set out at schedule 1.

(6) Where an application for a court file is made by a solicitor who meets the eligibility criteria set out at rule 3(1)(b), a partner in the legal firm must supply a completed form and provide a signed copy of the undertaking set out at schedule 2.

(7) Where an application for a court file is made by an employee of a charity who meets the eligibility criteria set out at rule 3(1)(c), each person requiring access to

the file must supply a completed form and provide a signed copy of the undertaking set out at schedule 3.

Information that may be released

5.—A court file shall be deemed eligible for release under these Rules only to the extent that the release of the information complies with the Data Protection Principles set out in schedule 1 of the Data Protection Act 1998⁵.

Ministerial decision and duty on the Department to consult

6.—Prior to the Minister making a decision about the release of a court file under these Rules the Department shall consult the relevant authorities.

Provision of information

7.—(1) An applicant who meets the eligibility criteria set out at rule 3(1) may be provided by the Department with all information deemed eligible for release.

(2) Without prejudice to the generality of rule 7(3), the Department shall review any requested court file to ensure that its release complies with the Data Protection Principles set out in schedule 1 of the Data Protection Act 1998.

(3) The Minister may withhold the whole or part of any court file and may impose such conditions, as the Minister sees fit, on the release of the whole or part of any court file.

(4) In order for the Department to release a court file to an applicant under these Rules, the applicant shall:

- (a) attend the Office at a time agreed by the Office; and
- (b) produce photographic evidence of identity which is reasonably capable of establishing their identity.

(5) Without prejudice to the generality of rule 7(4), the Department may release a court file to an applicant by such other arrangements as the Department may determine where it appears to the Department that it is appropriate to do so.

Conditions applicable to a released court file

8.—(1) An applicant to whom the Department has released a court file under these Rules must—

- (a) keep the court file confidential and stored securely;
- (b) not copy, or permit the copying of, the court file other than as permitted by rule 8(3);
- (c) not reformat, or permit the reformatting of, the court file;

⁵ 1998 c. 29

- (d) not publish, or permit the publication of, the court file, except where such permission has been sought and granted under rule 9; and
- (e) notify the Office in writing of any change of name or address.

(2) A person who is subject to the undertaking at schedule 1 may share with a solicitor a court file released under these Rules for the purposes of obtaining legal advice.

(3) A solicitor who is subject to the undertaking at schedule 2 may copy, or permit the copying of, a court file released under these Rules for the purposes of—

- (a) sharing the court file with counsel;
- (b) sharing the court file with medical or other expert witnesses; or
- (c) making a submission to the Attorney General to request a new inquest under section 14(1) of the Coroners Act (Northern Ireland) 1959⁶.

(4) An applicant who receives a court file under these Rules shall within ten years of the date on which the Department released the court file—

- (a) return to the Office the court file and any copy of the court file; or
- (b) apply in writing to the Department for permission to retain the court file for a further period of time.

(5) Upon receipt of an application under rule 8(4) the Minister may permit the applicant to retain the court file for such further period of time as the Minister may decide.

Application to publish released court file

9.—(1) An applicant may seek the Minister's permission to publish a court file released under these Rules by applying in writing to the Office.

(2) An application must—

- (a) identify the information intended for publication;
- (b) identify the purposes for which publication is required; and
- (c) provide any other information relevant to the application.

(3) Prior to the Minister making a decision about the publication of the court file the Department shall consult the relevant authorities.

(4) Without prejudice to the generality of the Minister's power under rule 9(1) to grant permission, permission will be granted to use information for court purposes in any case in which the applicant's rights under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms so require.

Application for review of a decision

10.—(1) An applicant who meets any of the eligibility criteria set out at rule 3(1) who has been refused access to a court file under these Rules, may apply in writing to the Minister for a review of the decision to refuse access to that court file.

⁶ 1959 c. 15 (N.I.)

(2) An application for review under rule 10(1) must be made within one calendar month of the date of the Department issuing notification that all or part of a court file will not be released.

(3) An application for review under rule 10(1) must be on the grounds that—

- (a) the process was not properly followed; or
- (b) all of the relevant information was not available to the Minister at the time the decision was taken.

(4) An application for review under rule 10(1) must detail—

- (a) confirmation of the applicant's eligibility;
- (b) the grounds for the review; and
- (c) relevant information that was not available to the Minister at the time that the decision was taken.

(5) Prior to the Minister making a decision the Department shall consult the relevant authorities.

(6) The Minister may in respect of an application for review under rule 10(1)—

- (a) dismiss the application; or
- (b) allow the application and overturn the decision in whole or in part.

(7) The Department shall inform the applicant in writing of the Minister's decision.

Recall of released court files

11.—(1) Where the Minister has reasonable cause to believe that an applicant has failed to comply with an undertaking provided under rule 4, or conditions applied under rule 7(3) and rule 8, the Minister may require that the applicant return court files received under these Rules, and any copies, within such period as the Minister shall specify.

(2) Where a requirement is made under rule 11(1), it shall be the duty of the applicant to comply with it.

Signature

Sealed with the Official Seal of the Department of Culture, Arts and Leisure on XX
XXXXX 2016

(L. S.)

Maggie Smith
A senior officer of the
Department of Culture, Arts and Leisure

SCHEDULE 1

Undertaking to be signed by any applicant who meets the criteria at rule 3(1)(a)

**UNDERTAKING in relation to privileged access to court files
for.....**

1. I undertake to keep the files and all their contents in strict confidence and to take all reasonable security precautions in the safekeeping of the information they contain.
2. I understand that I may share the files or their contents with a solicitor for the purposes of obtaining legal advice. I undertake not to share the files or any of their contents with anyone other than a solicitor and not to permit any other person to share the files or any of their contents, other than as permitted by the Court Files Privileged Access Rules (Northern Ireland) 2016.
3. I undertake not to copy the files or any of their contents and not to permit any other person to copy the files or any of their contents, other than as permitted by the Court Files Privileged Access Rules (Northern Ireland) 2016.
4. I undertake not to reformat the files or any of their contents and not to permit any other person to reformat the files or any of their contents.
5. I undertake not to publish the files or any of their contents and not to permit any other person to publish the files or any of their contents, other than as permitted by the Court Files Privileged Access Rules (Northern Ireland) 2016.
6. I confirm that within 10 years of [DATE], which is the date on which the Department released the files to me, I will EITHER:
 - a. return the files to PRONI, OR
 - b. write to PRONI to request permission to keep the files for a further period of time.
7. I understand that a breach of this undertaking may result in legal action against me.

Name
Address
Signature
Date

SCHEDULE 2

Undertaking to be signed by a Partner in a Legal Firm who meets the criteria at rule 3(1)(b)

UNDERTAKING in relation to court files for.....

1. I undertake to keep the files and all of the contents in strict confidence and to take all reasonable security precautions in the safekeeping of the information they contain.
2. I undertake not to copy the files, or any of the contents, save for the purposes of obtaining or providing legal advice.
3. I undertake not to share the files, or any of the contents, with any third party and not to disseminate them further without the express consent of the Department except for the purposes of obtaining legal advice or for obtaining relevant expert opinion required in connection with the formulation of such advice or for making any application to the Attorney General for the exercise of his power under section 14(1) of the Coroners Act (Northern Ireland) 1959.
4. I undertake not to reformat the files or any of their contents and not to permit any other person to reformat the files or any of their contents.
5. I undertake not to publish the files or any of their contents and not to permit any other person to publish the files or any of their contents, other than as permitted by the Court Files privileged Access Rules (Northern Ireland) 2016.
6. I confirm that within 10 years of [DATE], which is the date on which the Department released the files to me, I will EITHER:
 - a. return the files to PRONI, OR
 - b. write to PRONI to request permission to keep the files for a further period of time.
7. I understand that a breach of this undertaking may result in a complaint against me to the Law Society or in legal action against me or my firm.

Name
Position in legal firm
Name of legal firm
Address of legal firm
Signature
Date

SCHEDULE 3

Undertaking to be signed by an employee of a charity who meets the criteria at rule 3(1)(c)

**UNDERTAKING in relation to privileged access to court files
for.....**

1. I undertake to keep the files and all their contents in strict confidence and to take all reasonable security precautions in the safekeeping of the information they contain.
2. I undertake not to share the files or any of their contents and not to permit any other person to share the files or any of their contents.
3. I undertake not to copy the files or any of their contents and not to permit any other person to copy the files or any of their contents.
4. I undertake not to reformat the files or any of their contents and not to permit any other person to reformat the files or any of their contents.
5. I undertake not to publish the files or any of their contents and not to permit any other person to publish the files or any of their contents.
6. I confirm that within 10 years of [DATE], which is the date on which the Department released the files to me, I will EITHER:
 - a. return the files to PRONI, OR
 - b. write to PRONI to request permission to keep the files for a further period of time.
7. I understand that a breach of this undertaking may result in legal action against me.

Name

Position in charity

Name of charity and charity registration number

Address of charity

Signature

Date

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules enable the Department to establish procedures to allow privileged access to information contained in court files.

The Rules enable the Department to impose specific conditions to determine information eligible for release under the Rules. The Rules place a duty on the Department to consult relevant authorities i.e. the Northern Ireland Office, the Department of Justice and the public authorities that transferred the files to the Public Record Office within which the requested information is contained.

The Rules set out the criteria a person must fulfil to be eligible to receive information under the Rules, the process for application and the conditions applicable to information released under these Rules. The Rules make provision for applicants to apply for a review of a decision to withhold information contained in a court file. The Department may recall any information issued under these Rules.

Section 75 Policy Screening Form

Part 1: Policy Scoping

The first stage of the screening process involves scoping the policy or policy area. The purpose of policy scoping is to help prepare the background and context and set out the aims and objectives for the policy being screened. At this stage, scoping the policy will help identify potential constraints as well as opportunities and will help the policy maker work through the screening process on a step by step basis.

You should remember that the Section 75 statutory duties apply to internal policies (relating to people who work for the authority), as well as external policies (relating to those who are, or could be, served by the authority).

Information about the policy

Name of the policy or policy area:

Statutory Rules on Privileged Access to Information contained in Court and Inquest Files

Is this an existing, revised or a new policy/policy area?

Existing	Revised	New
X		

Brief Description

PRONI receives a number of requests each year from interested persons (particularly the next of kin) asking to access information about their loved ones contained in court and inquest files. PRONI releases files under the Data Protection Act 1998 (DPA), under the Freedom of Information Act 2000 (FOIA) and under the Public Records Act (NI) 1923. When releasing information under FOIA, PRONI is obliged to make that information available to the public at PRONI. For many individuals and families seeking information about relatives, the FOIA process is unsatisfactory because it means that the action of requesting access to information in court or inquest files, which they consider to be deeply private, can result in the information being released into the public domain.

The proposed Statutory Rules will set out a process that will enable the information to be accessed while avoiding the requirement to make the information public afterwards. The process is compliant with obligations under the European Convention of Human Rights (ECHR) and the Data Protection Act 1998.

What is it trying to achieve? (intended aims and outcomes)

The creation of Statutory Rules for the release of court and inquest records held by the Department would provide a recognised legislative process. It would ensure the process was open and transparent by clearly setting out the roles and responsibilities of the Department, relevant authorities and applicants to use the Rules. The Rules set out:

- the duties on the Department, including the requirement to consult Relevant Authorities (i.e. the NIO and DoJ).
- the grounds for the exemption of some material from release (i.e. subject to Data Protection Act principles and Articles 2 & 8 of the European Convention of Human Rights).
- the processes by which the applicant would request information and by which the Department would release it.
- provision for an Undertaking, along with its conditions and the availability of a waiver.
- obligations on the applicant to keep information confidential and to use it appropriately in accordance with the signed undertaking.
- provision for decision review process.

Are there any Section 75 categories which might be expected to benefit from the intended policy?

YES	NO	N/A
		X

If YES, explain how.

Who initiated or wrote the policy?

The policy development has been guided by the Minister who is mindful of the needs of those seeking information, of the risks associated with the release of certain types of information; and of the need for any process of release to be transparent, robust and compliant with the ECHR and the DPA. In developing the new process, the Department had the benefit of the advice of the Attorney General's office. Consultation was undertaken with a number of legal firms and with organisations representing victims and survivors including: the Pat Finucane Centre, Relatives for Justice, WAVE Trauma Centre and Justice for Innocent Victims of Terrorism, all of whom raised useful issues and questions which helped refine thinking.

Who owns and who implements each element of the policy?

The Department for Culture, Arts and Leisure 'owns' the policy which will be implemented by Public Record Office of NI. The Department will have responsibility for establishing and operating the process through subordinate legislation which will have been endorsed by the NI Assembly.

Implementation factors

Are there any factors which could contribute to/detract from the intended aim/outcome of the policy/decision?

YES	NO	N/A
X		

If YES, are they

Financial: YES (If YES, please detail)

Legislative: Y / N (If YES, please detail)

Failure to make legislation may result in the non-participation of official consultees. The Statutory Rules, if endorsed by the Assembly, will formalise the process and will enable consultee Departments to participate fully.

Other, please specify:

Main stakeholders affected

Who are the internal and external stakeholders (actual or potential) that the policy will impact upon?

Staff:

The implementation of the draft Rules will positively impact staff within the Records Management, Cataloguing and Access Team within PRONI. There will also be a positive impact on the staff involved in the release of information in consultee Departments as the procedures for the release of information will be clearly set out in legislation agreed by the Assembly.

Service users:

Individuals submitting an application who have been affected by an incident recorded in a court or inquest file. Legal representatives of a family member and/or individual who has been affected by an incident recorded in a court or inquest file. Organisations involved in delivering support services to family members and/or individuals who have been affected by an incident recorded in a court or inquest file.

Other public sector organisations:

Consultee Departments and associated relevant authorities (DoJ, NIO, PSNI, Courts Service, Coroner's Service)

Voluntary/community/trade unions:

Community Groups, representative organisations particularly those working with victims and survivors or with specific occupations (particularly those involved in first response).

Other, please specify:

[Other policies with a bearing on this policy](#)

What are they and who owns them?

The proposed Rules, which enhance citizen's access to information, are in the spirit of numerous International and Domestic laws and conventions which have been implemented in the UK through the Data Protection Act 1998 and the Freedom of Information Act 2000.

Available evidence

Evidence to help inform the screening process may take many forms. Public authorities should ensure that their screening decision is informed by relevant data.

What evidence/information (both qualitative and quantitative) have you gathered to inform this policy? Specify details for relevant Section 75 categories.

Section 75 Category	Details of Evidence/Information
Religious belief	<ul style="list-style-type: none"> • <i>The Northern Ireland Peace Monitoring Report, 2014</i>, Community Relations Council, Belfast • <i>Monitoring Poverty and Social Exclusion in Northern Ireland 2012</i> • Young Life and Times Survey 2011 • Young Person's Behaviour and Attitude Survey 2010 • Young Life and Times Survey 2007 • The Cost of the Troubles Study, Morrissey, Smyth, Fay & Wong, 1999, Incore, Derry.
Political opinion	<ul style="list-style-type: none"> • <i>The Northern Ireland Peace Monitoring Report, 2014</i>, Community Relations Council, Belfast • NI Young Life & Times Survey 2011 • NI Life and Times survey 2010
Racial / ethnic group	DCAL Audit of Inequalities 2013/14
Age	<ul style="list-style-type: none"> • <i>Monitoring Poverty and Social Exclusion in Northern Ireland 2012</i> • NI Young Life & Times Survey 2011 • NI Life and Times survey 2010
Marital status	
Sexual orientation	<ul style="list-style-type: none"> • DCAL Audit of Inequalities 2013/14
Men and women generally	<ul style="list-style-type: none"> • <i>Monitoring Poverty and Social Exclusion in Northern Ireland 2012</i> • The Cost of the Troubles Study, Morrissey, Smyth, Fay & Wong, 1999, Incore, Derry.
Disability	<ul style="list-style-type: none"> • <i>Monitoring Poverty and Social Exclusion in Northern Ireland 2012</i> • The Cost of the Troubles Study, Morrissey, Smyth, Fay & Wong, 1999, Incore, Derry.
Dependants	

Needs, experiences and priorities

Taking into account the information referred to above, what are the different needs, experiences and priorities of each of the following categories, in relation to the particular policy/decision? Specify details for each of the Section 75 categories

Section 75 Category	Details of Needs/Experiences/Priorities
Religious belief	<p>While not all court and inquest files relate to incidents that occurred as a direct result of the Troubles many files are conflict related. Gender, religion and location were identified as key factors in determining the experience and impact of The Troubles in the 1999 Cost of the Troubles Study. The study examined the experience of individuals in three areas which experienced the conflict to different levels of intensity (high/ 7+deaths per 1,000 pop., medium +1-7deaths per 1,000 pop., low -0 deaths per 1,000 pop.)</p> <p>The study concludes that, while location was the most significant factor influencing individual's experiences, religion was also a major contributor to individual's likelihood of being impacted by the Troubles. In all of the locations studied; Catholics reported more experience of and impacts from the Troubles than Protestants including more painful memories, dream and nightmares, intrusive thoughts, loss of interest in normal activities and feelings of insecurity. Of those reporting a complete change to their lives due to the Troubles 90.9% were Catholics compared to 8.1% Protestants, despite this proportionately more Protestants reported long-standing physical and/ or mental illness. This suggests that more conflict incidents recorded in court and inquest files may relate to Catholics however in terms of the profile of other individuals impacted by non-conflict related incidents recorded in court and inquest files- which are the majority of files held by PRONI it is reasonable to assume that these will mirror the profile of the general population.</p>
Political opinion	<p>National identity has often been used as a crude proxy for political opinion, while it has always been recognised as indicative and not a robust measure it is increasingly viewed as a weathervane for changing societal attitudes.</p> <p>In the 2011 census a question on national identity was included for the first time. The results showed a shift away from the majority/minority paradigm to one characterised in last year's Peace Monitoring Report as 'We are all minorities now'. The three main categories are: British: 40%, Irish: 25%, Northern Irish: 21 %. In addition, 9% of people identified with more than one nationality, while 5% of people selected national identities other than British, Irish or Northern Irish. It is reasonable to assume that the overall take-up (which will take account of people interested in accessing information about non-conflict related incidents) will reflect the profile of the general population.</p>
Racial / ethnic group	<p>It appears reasonable to assume that the take-up of opportunities to receive information using the proposed statutory privileged access process will mirror the ethnic profile of the general population.</p>
Age	<p>It is expected that the statutory privileged access process will be taken up by members of all age groups. Experience of piloting the process suggests that requests emerge from peers in the same age group, elderly parents and relatives as well as young people who may have been children or not even born when the incident recorded in a court or inquest file occurred.</p>
Marital status	<p>Neutral experiences in relation to this policy.</p>
Sexual orientation	<p>No differential impact is anticipated in respect of membership of the LGBT community in terms of the take-up of opportunities to receive information via the statutory privileged release of information process. We anticipate that requests will mirror the profile of the general population.</p>

Men and women generally	The Cost of the Troubles Study indicates that a higher proportion of men (37.5%) than women (22.3%) reported 'a lot' or 'quite a lot' of experience of the troubles which may suggest a higher number of men may have been involved in incidents recorded in a court or inquest file. This might suggest that there will be more men that may wish to access information contained in conflict related court or inquest files via the process. However given the small percentage of conflict related files it is reasonable to assume that the take-up of the opportunity to privately access records is likely to mirror the profile of people using PRONI more generally, in total, 52% of new visitors registered in 2013/14 were female and 48%. This is representative of the demographic profile of NI society. <i>PRONI Digest 2013-2014.</i>
Disability	Some 17 per cent of all persons are multi-disabled, 7 per cent are disabled and 76 per cent are not disabled, <i>Household and Individual Characteristics of those in Poverty</i> , OFMDFM Bulletin No 5, May 2005. It is known from official statistics (compiled by the RUC/PSNI) that there have been over 40,000 injuries as a result of Troubles related incidents. It should be noted that the real figure could be higher since not all injuries will have been recorded. It is logical to assume that some of these injuries may have may be a consequence of an incident recorded in a court or inquest file which may have resulted in a long-term disability. This in turn might suggest greater take-up of this service amongst this group in comparison to standard PRONI services accessed by disabled people.
Dependants	In terms of end-usage of the process it is expected to mirror usage of the PRONI archive more generally. Number of respondents who had heard of PRONI/Baseline: Have dependents 62/382 [16%], no dependents 57/653 [8.7%], <i>Attitudes towards the Public Record Office of Northern Ireland</i> , findings from the Northern Ireland Omnibus Survey 2013.

Part 2: Screening Questions

Introduction

1. If the conclusion is **none** in respect of all of the Section 75 categories, then you may decide to screen the policy out. If a policy is 'screened out', you should give details of the reasons for the decision taken.
2. If the conclusion is **major** in respect of one or more of the Section 75 categories, then consideration should be given to subjecting the policy to an EQIA.
3. If the conclusion is **minor** in respect of one or more of the Section 75 categories, then consideration should still be given to proceeding with an EQIA, or to measures to mitigate the adverse impact; or an alternative policy.

In favour of a 'major' impact

- a) The policy is significant in terms of its strategic importance;
- b) Potential equality impacts are unknown, because, for example, there is insufficient data upon which to make an assessment or because they are complex, and hence it would be appropriate to conduct an EQIA;
- c) Potential equality and/or good relations impacts are likely to be adverse or are likely to be experienced disproportionately by groups of people including those who are marginalised or disadvantaged;
- d) Further assessment offers a valuable way to examine the evidence and develop recommendations in respect of a policy about which there are concerns among affected individuals and representative groups, for example in respect of multiple identities;
- e) The policy is likely to be challenged by way of judicial review;
- f) The policy is significant in terms of expenditure.

In favour of 'minor' impact

- a) The policy is not unlawfully discriminatory and any residual potential impacts on people are judged to be negligible;
- b) The policy, or certain proposals within it, are potentially unlawfully discriminatory, but this possibility can readily and easily be eliminated by making appropriate changes to the policy or by adopting appropriate mitigating measures;
- c) Any asymmetrical equality impacts caused by the policy are intentional because they are specifically designed to promote equality of opportunity for particular groups of disadvantaged people;
- d) By amending the policy there are better opportunities to better promote equality of opportunity and/or good relations.

In favour of none

- a) The policy has no relevance to equality of opportunity or good relations.
- b) The policy is purely technical in nature and will have no bearing in terms of its likely impact on equality of opportunity or good relations for people within the equality and good relations categories.

Taking into account the earlier evidence, consider and comment on the likely impact on equality of opportunity / good relations for those affected by this policy, by

applying the following screening questions and the impact on the group i.e. minor, major or none.

Screening questions

1 What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 grounds?		
Section 75 Category	Details of Policy Impact	Level of Impact?
Religious belief	The process will be open to individuals meeting the eligibility criteria regardless of their religious belief. Using the recorded use of PRONI assets as a proxy there should be no differential impact in take up of the process as there was no difference between adults identifying as Catholic, Protestant or as other/ no religion.	None
Political opinion	The process will be open to individuals meeting the eligibility criteria regardless of their political opinion. Using the recorded use of PRONI assets as a proxy there should be no differential impact in take up of the process.	None
Racial / ethnic group	The process will be open to individuals meeting the eligibility criteria regardless of their ethnicity. Using the recorded use of PRONI assets as a proxy there should be no differential impact in take up of the process which is likely to mirror the profile of the general population.	None
Age	Experience of piloting the process suggests that requests emerge from peers in the same age group, elderly parents and relatives as well as young people who may have been children or not even born when the incident recorded in the file occurred. There will be no adverse differential impact in respect of age.	Minor
Marital status	It is anticipated that usage of the process broken down by marital status will be representative of the general population.	None
Sexual orientation	It is anticipated that usage of the process broken down by sexual orientation will be representative of the general population.	None
Men and women generally	One might assume a slightly higher take-up of opportunities to request information contained in conflict related court and inquest files amongst men (given the higher likelihood that they will have been directly affected by the Troubles) however actual requests come from family members, friends, witnesses and others. For this reason and using the recorded use of PRONI assets as a proxy there should be no differential impact in the end-use of the process as there was no difference in the proportion of male and female adults using PRONI.	None
Disability	On average around one fifth of the population manages with a life limiting illness or disability, in NI there are c. 17% of individuals living with complex needs. As a consequence some users of the process will have disabilities including as a result of conflict-related injury or trauma. Given the prevalence of disability across the developed world it is also probable that the profile of those taking up the process will demonstrate the same or higher levels of disabled users.	Minor
Dependants	Using the recorded use of PRONI assets as a proxy there should be a very minor differential impact as there was a slightly higher likelihood of using PRONI amongst adults who have dependants.	None

2 Are there opportunities to better promote equality of opportunity for people within any of the Section 75 categories?

Section 75 Category	If Yes , provide details	If No , provide reasons
	Implementation of the new process has the potential to positively impact on people who have been bereaved or physically or psychologically injured as a consequence of an incident recorded in a court or inquest file.	

3 To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group?

Good Relations Category	Details of policy impact	Level of impact Minor/Major/None
Religious belief	The release of information about an incident recorded in court and/ or inquest files to eligible applicants is intended to help them understand the circumstances around the incident. The intention is that the provision of the information will answer some of the questions that people who have been bereaved, physically or psychologically injured as a result of an incident recorded in a court or inquest file with the aim of supporting their reconciliation with the issues impacting them. There may be indirect impacts in respect of relations between people of different religious beliefs, political opinions or racial groups but these are expected to be minimal.	None
Political opinion		
Racial group		

4 Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?

Good relations category	If Yes , provide details	If No , provide reasons
	The information provided through this process is intended for individuals (and their representatives) who have been impacted by an incident recorded in a court or inquest file held by PRONI. It will provided confidentially and is intended to answer some of the questions the requestor may have about the incident to help them reconcile the events. Any implications for the relations between people of different religious belief, political opinion or racial identity are expected to minimal.	

Additional considerations

Multiple identity

Generally speaking, people can fall into more than one Section 75 category. Taking this into consideration, are there any potential impacts of the policy/decision on people with multiple identities? (For example; disabled minority ethnic people; disabled women; young Protestant men; and young lesbians, gay and bisexual people).

Yes, the process has the potential to positively impact on the lives of people who at different times identify with different, sometimes multiple, designations set out at section 75 on the Northern Ireland Act 1998 i.e. religious background, national identity, race/ ethnicity, gender, sexual orientation etc. At different times and to differing degrees an individual's identification with a particular group/ groups will change in response to multiple factors, this will apply to people who have been impacted as a consequence of an incident recorded in a court or inquest file. The process will offer a private process for people who have been affected by an incident recorded in a court or inquest file to receive information. Access to the information contained court and inquest files, while very often containing sensitive, potentially difficult information, provides an opportunity for individuals to understand the circumstances around a specific incident.

Provide details of data on the impact of the policy on people with multiple identities. Specify relevant Section 75 categories concerned.

The process will be equally acceptable and accessible to all people who appear to the Deputy Keeper to have been directly affected by an incident recorded in a court or inquest file, regardless of their religion, political opinion, personal history (as it relates to the conflict), community, neighbourhood, gender, linguistic background, age, disability and other characteristics or identities.

Part 3: Screening Decision

In light of your answers to the previous questions, do you feel that the policy should: (please underline one):

- 1. Not be subject to an EQIA (with no mitigating measures required)**
- 2. Not be subject to an EQIA (with mitigating measures /alternative policies)**
- 3. Not be subject to an EQIA at this time**
- 4. Be subject to an EQIA**

If 1. or 2. (i.e. not be subject to an EQIA), please provide details of the reasons why:

[1 - Not be subject to an EQIA]

There is no evidence that introducing a statutory process for managing privileged access to court and inquest files will adversely impact any of the Section 75 groups.

All available evidence suggests that the private release of files to those affected by an incident recorded in those files will contribute to increased level of awareness and understanding of the issues surrounding the event that impacted their lives.

No specific mitigating measures in respect of the policy are required; implementation will fully integrate best practice in respect of engagement with victims and survivors.

Any asymmetrical equality impacts caused by the policy are intentional because they are specifically designed to promote equality of opportunity for particular groups of disadvantaged people.

If 2. (i.e. not be subject to an EQIA), in what ways can identified adverse impacts attaching to the policy be mitigated or an alternative policy be introduced?

N/A

In light of these revisions, is there a need to re-screen the revised/alternative policy at a future date? YES / NO

If YES, when & why?

If 3. or 4. (i.e. to conduct an EQIA), please provide details of the reasons:

N/A

Timetabling and Prioritising EQIA

If 3. or 4., is the policy affected by timetables established by other relevant public authorities? YES / NO

If YES, please provide details:

N/A

Please answer the following questions to determine priority for timetabling the EQIA. On a scale of 1-3, with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for EQIA.

Priority criterion	Rating (1-3)
Effect on equality of opportunity and good relations	
Social need	
Effect on people's daily lives	
Relevance to a public authority's functions	

Note: The Total Rating Score should be used to prioritise the policy in rank order with other policies screened in for EQIA. This list of priorities will assist you in timetabling the EQIA. Details of your EQIA timetable should be included in the quarterly Section 75 report.

Proposed date for commencing EQIA: _____

Any further comments on the screening process and any subsequent actions?

N/A

Part 4: Monitoring

Effective monitoring will help identify any future adverse impacts arising from the policy which may lead you to conduct an EQIA, as well as help with future planning and policy development. You should consider the guidance contained in the Commission's Monitoring Guidance for Use by Public Authorities (July 2007). The Commission recommends that where the policy has been amended or an alternative policy introduced, then you should monitor more broadly than for adverse impact (See Benefits, P.9-10, paras 2.13 – 2.20 of the Monitoring Guidance).

Please detail proposed monitoring arrangements below:

Monitoring systems are in place to capture information about each request for access to records under this process. Information about end-users will be captured at a high level through the ICT systems. Other relevant information e.g. consultee response times will be collated and used to establish a base-line in year 1 of the operation of the formal process.

Monitoring will continue and be compiled on an annual basis, the information collected will be included in the Deputy Keeper's annual report which is provided to the responsible Minister, the First and Deputy First Minister before it is laid at the NI Assembly.

Part 5: Approval and Authorisation

Screened by:	Position/Job Title	Date
Catherine Martin	Policy & Legislation, RMCAT, PRONI	28/09/2015
Approved by:		
David Huddleston	Head of RMCAT, PRONI	06/01/2016

Note: A copy of the Screening Template, for each policy screened should be 'signed off' and approved by a senior manager responsible for the policy, made easily accessible on your website as soon as possible following completion and made available on request.