Legislating about Gerry Adams and *Carltona*

Richard Ekins KC (Hon) and Sir Stephen Laws KCB, KC (Hon)

Foreword by Lord Bew, Rt Hon Lord Butler of Brockwell KG GCB CVO, Lord Caine, Lord Faulks KC, Lord Godson, Rt Hon Lord Hope of Craighead KT, Rt Hon Lord Howell of Guildford, Rt Hon Lord Keen of Elie KC, Lord Lisvane KCB DL, Lord Macdonald of River Glaven KC, Rt Hon Lord Powell of Bayswater KCMG, Lord Trevethin and Oaksey KC, Rt Hon Lord West of Spithead GCB DSC

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Policy Exchange

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Contents

About the Authors 2
Foreword 5
Introduction 8
The legal and political background 10
The Government's intentions 12
Legislative options for the Government 14
The draft enactment 16
An explanatory note 19
The compatibility of the draft enactment with Convention rights 23

Appendix: Government statements since 15 January 2015 29

Foreword

Lord Bew, Chair of the Committee on Standards in Public Life 2013-2018

Rt Hon Lord Butler of Brockwell KG GCB CVO, Cabinet Secretary 1988-1998

Lord Caine, Parliamentary Under-Secretary (Northern Ireland Office) 2021-2024

Lord Faulks KC, former Minister of Justice and Chair of the Independent Review of Administrative Law

Lord Godson, Director of Policy Exchange

Rt Hon Lord Hope of Craighead KT, Deputy President of the Supreme Court of the United Kingdom (2009-2013) and Lord of Appeal in Ordinary (1996-2009)

Rt Hon Lord Howell of Guildford, Minister of State for Northern Ireland 1972-1974

Rt Hon Lord Keen of Elie KC, former Advocate General for Scotland

Lord Lisvane KCB DL, former Clerk of the House of Commons

Lord Macdonald of River Glaven KC, former Director of Public Prosecutions

Rt Hon Lord Powell of Bayswater KCMG, Private Secretary to the Prime Minister 1983-1991

Lord Trevethin and Oaksey KC, barrister

Rt Hon Lord West of Spithead GCB DSC, former Parliamentary Under-Secretary of State for Security and Counter-Terrorism

In seven statements made in Parliament since 15 January 2025, Ministers, including the Prime Minister and the Secretary of State for Northern Ireland, have given assurances that they intend to legislate to prevent Gerry Adams from being paid compensation and to restore the *Carltona* principle. The spur for these assurances was clearly the publication of a Policy Exchange paper on 14 January, in which Professor Richard Ekins and Sir Stephen Laws pointed out that the Government was about to repeal legislation that achieved these same ends.

Sections 46 and 47 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 had been enacted in response to the Supreme Court's 2020 judgment, *R v Adams*. Allowing Gerry Adams's appeal against his 1975 conviction for attempting to escape from lawful custody, the Supreme Court had misinterpreted the 1972 Order under which he and many others had been detained. The judgment put in doubt the fundamental *Carltona* principle, which underpins our system of government,

and made it possible for Gerry Adams and hundreds of others to seek "compensation" for what should always have been understood to have been lawful detention.

Having recognised that the judgment was wrongly decided, not least thanks to a Policy Exchange paper published in May 2020, it was surely within Parliament's authority, and indeed was its responsibility, to intervene to set the law right, to restore the law actually enacted in 1972. The supremacy of Parliament, which is the bedrock of our constitution, undoubtedly entails the ability to enact legislation that reverses the effect of judicial decisions which misconstrue Parliament's legislative intention. In the end, sections 46 and 47 were adopted without division.

Parliament was fully aware of the prospect that sections 46 and 47 would be challenged as a breach of Convention rights. Thanks in part to another Policy Exchange paper, published in June 2023, the Government and the Opposition alike accepted that the legislation was not unfairly retrospective and that restoring the legal clarity that had been lost necessitated retrospective legislation. Neither Gerry Adams nor anyone else had acted to their detriment in reliance on the Supreme Court's misunderstanding of the 1972 Order and sections 46 and 47 did not treat anyone unfairly.

Nonetheless, in February 2024, the Northern Ireland High Court declared sections 46 and 47 to be incompatible with Patrick Fitzsimmon's Article 6 right to a fair trial. Having taken office in July, the Government abandoned an appeal against this declaration and in December it tabled a draft remedial order, which if accepted would repeal many provisions of the 2023 Act – including sections 46 and 47. The publication of Professor Ekins and Sir Stephen's paper on 14 January placed the High Court's judgment and the Government's response under intense public scrutiny. Neither the judgment nor the response have proven robust enough to withstand this attention.

For the reasons set out in their January paper, we agree that the Northern Ireland High Court misunderstood the reasons for which Parliament acted, mishandled the case law of the Strasbourg Court that it purported to apply, and failed to do justice to Parliament's reasoning in deciding to reverse the Supreme Court's judgment. It remains unclear why the Government abandoned the appeal in July 2024 and it remains open to the Government, even now, to amend or withdraw the draft remedial order and thus to maintain sections 46 and 47 on the statute book.

Still, the Government's plan seems to be to enact new legislation, replacing sections 46 and 47, which will restore the *Carltona* principle and stop Gerry Adams from being paid. These are the right aims and we commend the Government for its commitment to them. But it has been almost six months since the Prime Minister and the Secretary of State for Northern Ireland first addressed this question in Parliament and yet no legislation has been brought forward, although in recent days it has been reported that "the Prime Minister has sanctioned a legal change".[1] In this new paper for Policy Exchange, Professor Ekins and Sir Stephen

1. Charles Hymas, "Labour to block Gerry Adams from claiming compensation" *Telegraph*, 1 July 2025

have blazed a legislative trail for the Government to follow, setting out a new draft clause that meets its stated aims, which the Secretary of State can adopt without even strictly having to disagree with the Northern Ireland High Court.

The legislation that their paper proposes is framed differently from sections 46 and 47, introducing a more general rule about how one should interpret legislation that confers a function on a Minister, but also authorises another person to sign an instrument exercising that function. This rule, which partly restates the *Carltona* principle, would apply to the 1972 Order, which empowered the Secretary of State to make interim custody orders and authorised a Minister of State or Under Secretary of State to sign such orders. The legislation also responds to three features of *R v Adams*, each of which warrant limiting the payment of compensation in future cases, introducing a rule that no compensation should be paid, or any other remedy granted, if (1) the claim is made more than six years after the decision was made, (2) it would have made no difference if the decision had been made by the Minister personally, and (3) the decision that forms the basis of the claim has been overtaken by a new, separate and independent decision.

All three of these features warrant limiting payment of compensation to Gerry Adams, who appealed against his conviction decades out of time, would almost certainly have been detained by the Secretary of State personally, and was detained, when he attempted to escape, on the order of an independent Commissioner, rather than a Minister. None of these features informed the drafting of sections 46 and 47. They were thus not considered by the Northern Ireland High Court in *Fitzsimmons*. For the reasons that Professor Ekins and Sir Stephen give, the Secretary of State can certainly introduce the legislation they propose, or something like it, and make a statement in good conscience that the legislation is compatible with Convention rights.

The Secretary of State is rightly determined to prevent the injustice of paying public money to Gerry Adams and to restore the vital *Carltona* principle. If, as seems likely, the Secretary of State remains intent on achieving these ends by enacting new legislation, rather than by withdrawing his remedial order and maintaining sections 46 and 47 on the statute book, then this paper outlines legislation that he should adopt. In view of the Government's repeated undertakings to Parliament, we look forward to the Secretary of State bringing forward legislation to this effect in the near future.

Introduction

On 15 January 2025, the Leader of the Opposition, Kemi Badenoch MP, put it to the Prime Minister "that his Government may write a cheque to compensate Gerry Adams". Ms Badenoch's charge must have been prompted by the publication of our Policy Exchange paper about the Government's decision to repeal sections 46 and 47 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023.[2] Responding to Ms Badenoch, Sir Keir Starmer KC MP assured Parliament that the Government was "working on a draft remedial order and replacement legislation, and we will look at every conceivable way to prevent these types of cases from claiming damages—it is important that I say that on the record." A few minutes earlier, the Secretary of State for Northern Ireland, Hilary Benn MP, had given a similar assurance to Parliament, an assurance he has since repeated, adding, as he put it on 21 May 2025, "that the main issue here is the *Carltona* principle… and we need to find another way of reaffirming that principle". Baroness Anderson of Stoke-on-Trent has given similar assurances about the Government's intentions in the House of Lords.

We commend the Government for its concern to prevent damages being paid to Gerry Adams and others who were detained in the 1970s for suspected involvement in terrorism and to reaffirm the *Carltona* principle. The twin risks that damages will be paid and that the *Carltona* principle's application has been put in doubt both arise from the Supreme Court's judgment in *R v Adams* [2020] UKSC 19. Sections 46 and 47 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 were enacted in response to that judgment. The provisions restore the validity of the Interim Custody Orders (ICOs) made in the 1970s, which the judgment had undermined, and, inter alia, prevent compensation being paid to those, such as Gerry Adams, who had been detained in the 1970s pursuant to the relevant ICOs for suspected involvement in terrorism.

In July 2024, the new Government withdrew its predecessor's appeal against a declaration by the Northern Ireland High Court, in *Re Dillon & Ors* [2024] NIKB 11, as to the incompatibility of sections 46 and 47 with the Convention rights of Patrick Fitzsimmons, one of the applicants for judicial review in that complex case. In December 2024, the Government tabled the draft Northern Ireland Legacy Remedial Order, which makes provision for the repeal of parts of the Legacy Act 2023, including sections 46 and 47. However, the Government now says – and has said repeatedly since 15 January this year – that it is looking to legislate to prevent compensation being paid and to reaffirm the *Carltona* principle. This paper explains how the Government can legislate to this effect. The paper

2. R Ekins and S Laws, *Misjudging Parliament's reversal of the Supreme Court's judgment in* R v Adams (Policy Exchange, January 2025); the paper was published at 10pm on 14 January 2025.

sets out a draft enactment that will solve the problem and is compatible with Convention rights. That means that, in introducing this proposed legislation, the Secretary of State would be able to make a statement, in accordance with section 19(1)(a) of the Human Rights Act 1998, that the legislation is compatible with Convention rights.

The legal and political background

The Supreme Court's judgment in *R v Adams* [2020] UKSC 19 was a bad mistake. It misinterpreted the 1972 Order under which Gerry Adams and thousands of others had been detained in Northern Ireland in the early 1970s for suspected involvement in terrorism. It also put the status and application of the fundamental *Carltona* principle in doubt – and it wrongly opened the door for Gerry Adams and hundreds of others to claim compensation. Gerry Adams's period of detention had begun with an Interim Custody Order (ICO) made under the terms of the 1972 Order. He only challenged the validity of the ICO, and thus his detention, almost half a century later. He did so by appealing out of time against his 1975 conviction for attempting to escape from lawful custody and the Supreme Court's decision overturned that conviction.

In a paper published by Policy Exchange a fortnight after the judgment,[3] we trenchantly criticised the Supreme Court's reasoning and recommended that Parliament enact legislation, not to reinstate Gerry Adams's conviction or reverse the judgment on his appeal, but to reverse the other legal consequences of the judgment and to limit its damaging implications. Any corrective legislation, we said, should leave the quashing of Gerry Adams's conviction well alone, as a matter of long-established constitutional practice and comity between the legislature and the courts. The point rather was (a) to avoid the judgment undermining the *Carltona* principle and (b) to prevent unjust payment of public money to Gerry Adams and others, who had in truth been lawfully detained and should not be entitled to "compensation" as a result. In 2023, Parliament accepted this reasoning and enacted sections 46 and 47 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023.[4] Those sections provided that ICOs signed by a Minister of State or Undersecretary of State (which were thus orders that may not have been considered personally by the Secretary of State) had been validly made and, accordingly – and then also expressly – ruled out further legal proceedings based on their mistakenly assumed invalidity.

In February 2024, the Northern Ireland High Court declared that sections 46 and 47 were incompatible with the Convention rights of a claimant, Mr Fitzsimmons, who had relied on the Supreme Court's *R v Adams* judgment to appeal against his own conviction for attempting to escape from lawful detention in the 1970s and who had then been blocked, by sections 46 and 47, from bringing proceedings for compensation. Specifically, the

3. R Ekins and S Laws, *Mishandling the Law: Gerry Adams and the Supreme Court* (Policy Exchange, May 2020)
4. See further R Ekins and S Laws, *Reversing the Supreme Court's judgment in* R v Adams (Policy Exchange, June 2023)

High Court ruled that sections 46 and 47 breached his Article 6 right to a fair trial (as well as his Article 1, Protocol 1 right to peaceful enjoyment of his possessions), because the legislation was a retrospective interference in ongoing legal proceedings without adequate justification.

The Government at the time appealed against this declaration, alongside four others, but the new Government that took office after the July 2024 election promptly abandoned the appeals against all five declarations of incompatibility. In September 2024, the Court of Appeal in Northern Ireland gave judgment,[5] noting in passing that it agreed with the High Court's conclusion on this point and commending the Government for conceding that the legislation was incompatible with Convention rights. In December 2024, the Government tabled a draft remedial order under section 10 of the Human Rights Act, which repealed various provisions of the Legacy Act 2023, including sections 46 and 47.

5. *Re Dillon & Ors* [2024] NICA 59

The Government's intentions

On the evening of 14 January 2025, we published a critique of the Northern Ireland High Court's 2024 judgment and the Government's decision to abandon the appeal and to make a remedial order repealing sections 46 and 47.[6] Our critique was backed by sixteen peers, including Lord Hope, the former Supreme Court Justice, and the late Lord Etherton, the former Master of the Rolls. The prospect of compensation being paid to Gerry Adams, to which our paper had drawn attention, was raised in Prime Minister's Questions on 15 January, as noted above. Our paper had been put to the Secretary of State for Northern Ireland, Hilary Benn, in an earlier exchange that day. It was raised again in other later exchanges with Hilary Benn in the House of Commons and Baroness Anderson of Stoke-on-Trent in the House of Lords. In an appendix to this paper, we set out these exchanges in full. They form a record of the Government's stated intentions about this matter.

The Secretary of State has been categorical about the Government's intentions. On 15 January, he said: "It is a complex and difficult question—the last Government found it difficult—but we will continue to follow the same path to see whether it is possible to discover a legal means of dealing with the problem that the hon. Gentleman has identified." On 11 February, he said "I have given an undertaking from the Dispatch Box that we are looking at all lawful means to prevent compensation from being paid in those circumstances." On 26 February, he said "We are currently working to find a lawful way of dealing with the problems that were created by the way in which the original interim custody orders were signed in 1972 and, I think, 1973. In 2020, the Supreme Court found that orders that had not been signed and considered by the then Secretary of State were not lawful." (This is, by the way, the first and only statement that the Secretary of State has made in the House that implies – wrongly – that the problem arises from the practice in the Northern Ireland Office in 1972 and 1973, rather than from the Supreme Court's misinterpretation of the 1972 Order in 2020.)

Most recently, on 21 May, he said:

> *"We supported clauses 46 and 47 at the time, but they have not worked, and that is why we have to find an alternative way forward. I just say to the House that the main issue here is the Carltona principle, which the last Government argued meant it was lawful for junior Ministers to sign ICOs. The amendment to try to deal with that failed, and we need to find another way of reaffirming that principle. That is at the heart of this case."*

6. See n1 above.

In answer to a follow-up question from the Shadow Secretary of State, Alex Burghart, he added: "The Supreme Court judgment was in 2020, and the last Government could not find a legal solution in almost three years. I am committed to finding one, and I promise that I will update the House when we have found it."

On 16 January, Baroness Anderson said that "The objective in Sections 46 and 47 was right, which is why my party supported it in opposition. The method has been found to be unlawful and we are looking at every option for engagement." On 26 February, in answer to a question from Lord Faulks KC about whether "the Government have come to the clear conclusion that it would be contrary to the European Convention on Human Rights to allow someone in Gerry Adams's position—or, rather, not to allow him—to proceed with his claim for damages because that would be against the convention", she said: "That is absolutely not the Government's position. The Government's position is clear, and the Secretary of State and the Prime Minister have been clear: we will find a lawful way to move forward."

Legislative options for the Government

In seven exchanges in the Houses of Parliament, the Government has thus repeatedly said that it is committed to finding a legal solution to the twin (related) problems of (1) how to prevent compensation from being paid to Gerry Adams and others in a similar position and (2) how to reaffirm the *Carltona* principle. The Joint Committee on Human Rights (JCHR) issued its report on the draft Northern Ireland Legacy Remedial Order on 28 February 2025. The Government has yet to respond to the report. The deadline for a response was 28 May 2025, although this will not be the first time that a response to a JCHR report on a remedial order has been delayed.

The Government has repeatedly said that provisions of the Legacy Act 2023, including sections 46 and 47, were found to be unlawful. Making due allowance for imprecise language on the part of non-lawyers (although of course the Prime Minister is himself a distinguished barrister), this analysis is fallacious: specifically, in the case of sections 46 and 47, because of the terms of the declaration in Mr Fitzsimmons' case, but also more generally. UK courts have no power to find an Act of Parliament or any part of it unlawful. Section 4(6) of the Human Rights Act 1998 provides that a declaration of incompatibility "does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given and… is not binding on the parties to the proceedings in which it is made." The Northern Ireland High Court declared certain provisions of the Legacy Act 2023, including (but only as regards their effect on Mr Fitzsimmons) sections 46 and 47, incompatible with Convention rights; it did not find those provisions to be *unlawful*. Under the scheme of the Human Rights Act 1998, it remains for the Government and Parliament to decide whether, and if so how, to legislate in response to a declaration of incompatibility. As Lord Hope, the former Supreme Court Justice and Law Lord put it in his preface to our January paper, "Parliament is not obliged by the 1998 Act to act on a declaration of incompatibility. This may be one of those exceptional cases where it is the public interest that it should not do so."

The Secretary of State for Northern Ireland has said, more than once, that "the last Government could not find a legal solution in almost three years." With respect, the last Government did not address this matter at all until it was put on the parliamentary agenda in May 2023 by Lord Faulks KC and Lord Godson, who tabled an amendment to the Legacy Bill as it then

was. The Secretary of State for Northern Ireland risks overcomplicating the problem when he says: "It is a complex and difficult question—the last Government found it difficult—but we will continue to follow the same path to see whether it is possible to discover a legal means of dealing with the problem". The most straightforward, simple and perfectly lawful way for the Government to ensure that Gerry Adams and others like him are not paid public money for their detention in the 1970s, and to reaffirm the *Carltona* principle, is to maintain sections 46 and 47 on the statute book without repealing them either in a remedial order or primary legislation. That is something that section 4 of the Human Rights Act was intended to ensure they are quite entitled to do.

Still, it seems the Government would prefer to bring forward new legislation, if a proposal can be devised, that will adopt a different means to secure the twin ends of both preventing Gerry Adams and others from being paid public money and of securing the status of the *Carltona* principle in our law and constitutional arrangements. This is not an impossible task. We set out below a draft enactment that demonstrates an approach to the problem that could be adopted by the Government and Parliament without requiring Government expressly to contradict the concession it made in the *Fitzsimmons* case. If it prefers not to leave sections 46 and 47 on the statute book, the Government should adopt it, or something like it, and ask Parliament to enact it.

The draft enactment

Decisions about functions by persons signing the instrument to give effect to them

(1) This subsection applies to every enactment (whenever passed or made) so far as it—

(a) confers a function on a Minister of the Crown; and

(b) authorises an instrument for giving effect to the exercise of that function to be signed by a person other than that Minister.

(2) Subject to subsection (3), an enactment to which subsection (1) applies must be construed as—

(a) authorising every person who is identified in that enactment as a signatory to make any or all of the decisions in a particular case about the exercise of the function (including those about the manner of its exercise or about the issue of an instrument to give effect to a decision about any of those matters); and

(b) authorising every such person to make those decisions without any requirement for them to be separately referred to, considered by or subsequently ratified by the Minister personally.

(3) Subsection (2) does not apply so far as the enactment separately and expressly sets out a requirement that the Minister on whom the function was conferred must personally have considered whether the function should be exercised, the manner of its exercise or the issue of the instrument that gives effect to its exercise.

(4) A person ("the claimant") is not entitled, at any time after the passing of this Act–

(a) to receive in respect of a signatory's incapacity any damages for loss or damage or any compensation payable under any enactment or otherwise, or

(b) to be granted in respect of any such incapacity any other form of remedy or relief in any civil or criminal

proceedings,

unless the claimant shows that each of the conditions in subsections (6) to (8) is satisfied.

(5) An entitlement to receive damages or compensation, or to be granted a remedy or relief, is in respect of a signatory's incapacity if the grounds on which the claimant asserts the entitlement rely (directly or indirectly) on an assertion or determination (including one already made) that the person who signed the instrument giving effect to the exercise of a function conferred on a Minister of the Crown by or under any enactment was not authorised to make decisions about the exercise of that function.

(6) The first condition is that the first occasion on which a formal assertion of the signatory's incapacity was made was less than six years after–

(a) the date on which that instrument was issued; or

(b) if later, the earliest date on which the identity of the person who signed the instrument in question and the office held by that person at the time of the signature, first became known or ascertainable by the claimant or a person representing the claimant.

(7) The second condition is that a different decision would have been taken if it had been taken by the person whose personal consideration of the matter was required.

(8) The third condition is that the entitlement to damages or compensation or to the other remedy or relief does not depend (directly or indirectly) on the invalidity of a subsequent decision which–

(a) was independently and separately made with the effect of superseding the earlier decision; and

(b) falls itself to be treated as invalid by reason only of the invalidity of the earlier decision on the grounds that the signatory of the instrument giving effect to the earlier decision was not authorised to make it.

(9) Subsection (4) has effect irrespective of whether the claimant has already (either before the time from which that subsection takes effect or subsequently) begun proceedings or otherwise applied to recover the damages or compensation or to be granted the remedy or relief, or taken any other steps towards recovering the damages or compensation or being granted the remedy or relief.

(10) In the case of an enactment conferring a function to be exercised

by the making of a legislative instrument, subsection (6) is to have effect (whether or not express provision is made as to who may sign the instrument) as if for the reference to "six years" there were substituted a reference to "six months".

(11) Neither this section nor any decision in a case relating to an enactment to which subsection (1) applies is to be taken as prejudicing the general rule of interpretation under which, where no express provision is made about signatories, it is presumed, unless express provision is made to the contrary, that functions conferred on a Minister of the Crown in charge of a government department, or on a government department, may be exercised—

(a) by any of the Ministers or officials of that department, and

(b) in the case of functions conferred by any enactment on the Secretary of State, by any one of His Majesty's principal Secretaries of State or, on behalf of such a Secretary of State, by a Minister or official in such a Secretary of State's department.

(12) This section is to be treated as taking effect instead of sections 46 and 47 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 from the time at which those sections commenced; and those sections are to be treated for all other purposes as if they had never been passed and are, accordingly, repealed.

(13) In this section—

"enactment" includes any provision of a legislative instrument;

"formal assertion" means an assertion made for the purposes of any legal proceedings or in connection with any application made otherwise than in legal proceedings for statutory or other compensation;

"function" includes any power or duty; and, accordingly, references to exercising a function include references to performing it

"instrument" includes a document of any description;

"legislative instrument" means any subordinate legislation within the meaning of the Interpretation Act 1978 or any devolution legislation within the meaning of section 23ZA of that Act;

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975;

"remedy" includes any order capable of being made on an appeal in civil or criminal proceedings.

An explanatory note

Sections 46 and 47 of the Legacy Act 2023 retrospectively validated ICOs signed by a Minister of State irrespective of whether they had been personally considered by the Secretary of State and barred further proceedings for compensation or appeals against conviction that sought to challenge the validity of an ICO on the grounds that it had not been made or considered by the Secretary of State personally.

The draft enactment we outline above takes a different, broader approach. It is built more firmly on a general clarification of the application of the *Carltona* principle, especially in relation to enactments that confer a power on the Secretary of State but then authorise other persons to sign the implementing instrument. It then addresses various other legal issues that arose in *R v Adams*, which are not only relevant to the fairness of paying compensation where someone challenges the validity of an ICO half a century after it was made, but which are also of general application to situations that could arise in similar cases in future and would need to be remedied.

Subsections (1) and (2) establish a rule that where an enactment confers a function on a Minister (a power or a duty), and makes provision for persons other than the Minister to sign an instrument giving effect to the function, the signatory is authorised to perform the function, without the Minister having personally to consider it in order for what is done to be lawful. Subsection (3) qualifies this rule insofar as express provision is made requiring personal consideration. These three subsections address the effect of the enactment in issue in *R v Adams*, the 1972 Order, but extend beyond the terms of that enactment to any other provisions that are structured in the same way. Thus, they minimise the risk that the interpretation of other enactments will be disrupted by the approach taken by the Supreme Court in *R v Adams* (in which the inference was wrongly drawn from the specification of signatories that their capacity was confined, in a way that disapplied the operation of Carltona, just to applying a signature).

Subsection (4) establishes a rule that neither compensation, nor any other remedy or relief in civil or criminal proceedings, may be awarded or granted, when the claim is "in respect of a signatory's incapacity", unless three conditions are met. Subsection (5) provides that a claim is "in respect of a signatory's incapacity" when it depends, directly or indirectly on an assertion or determination that the person who signed an instrument giving effect to a function conferred on a Minister was not authorised to make decisions about that function.

The three conditions to which subsection (4) refers are set out in subsections (6)-(8). The conditions are cumulative, so a claimant has to satisfy all three for a claim to be successful. Subsection (4) shifts the burden to the claimant to establish these three matters, which is appropriate in the light of the context in which the conditions fall to be satisfied and the presumption of regularity.

It would also be possible for the Government to consider the use of each of the conditions, on its own, as a possible approach to solving the problem. Obviously, the justification for legislating relies on all three, which is why all three have been included in the draft. It would also be possible, but we think unnecessary and unhelpful, to confine the subsection to the recovery of damages or compensation and to omit references to other remedies and relief.

The first condition, in subsection (6), is that any claim that the person who signed the instrument was not authorised to exercise or perform the function must be made within six years of the earliest time when the identity of the signatory is revealed. That will normally be when the signed document is first made and delivered to the person affected by it. This condition avoids the absurdity that underpins what actually happened in *R v Adams*, namely that leave was granted to appeal against conviction almost fifty years after the events in question, when no new factual information had come to light and when it had always been open to Gerry Adams and others to challenge the validity of an ICO made against them in the 1970s on the relevant grounds, because it had been clear from the start who had signed the ICO, with that creating a clear implication, from the start, that it was the signatory who had decided that the order should be made.

The second condition, in subsection (7), is that a different decision would have been made if the Minister on whom the function had been conferred or imposed had considered and made the decision personally. This condition puts on a statutory footing the principle that the Supreme Court articulated in *Walumba Lumba (Congo) v Home Secretary* [2011] UKSC 12, namely that a person is not entitled to damages, other than nominal damages, for his unlawful detention if, but for the unlawful action, he would have been lawfully detained in any event. This point is highly relevant to the claims brought in reliance on *R v Adams*, where there is no reason to think that Gerry Adams, would not have been detained if the Secretary of State had considered his case personally. Subsection (7) generalises this point beyond cases of detention. Subsection (4)(b) requires the claimant to show that personal consideration would have made a difference.

The third condition, in subsection (8), is that there is no reliance on the invalidity of a subsequent decision independently and separately made which superseded the earlier decision and the validity of which is questioned only on the grounds that the person who signed the instrument giving effect to the earlier decision was not authorised to make it. This condition responds to another feature of the *R v Adams* case: the fact that at the time he attempted to escape from custody Gerry Adams was

not detained pursuant to the ICO signed by the Minister of State (which authorised at most 28 days of detention) but rather under a detention order made by an independent Commissioner (a former judge or senior lawyer). The Supreme Court in *R v Adams* took for granted, along with the Court of Appeal (where the point was immaterial, because it found against Gerry Adams on other grounds), that the Commissioner had no jurisdiction to make a detention order if the ICO that preceded it had not been properly made. This subsection rules out compensation, acquittal on appeal, or other public law relief when there is an independent and separate decision vindicating the relevant detention and providing good reasons to conclude that compensation is not warranted and that the defect is no more than a technicality giving rise to a windfall. Again, this provision extends beyond the context of the 1972 Order and the detention for which it provided. The condition in this subsection covers some but not all of the same ground as subsection (7) since the confirmation of detention by the Commissioner strongly suggests that the Secretary of State would also have agreed with the Minister of State's decision on the ICO.

Subsection (9) provides that the rule in subsection (4) applies even if the claimant has begun proceedings or otherwise begun to claim compensation or some other remedy.

Subsection (10) makes separate provision for statutory instruments etc by imposing a much shorter period – six months rather than six years – within which any challenge to the capacity of a signatory must be brought. The point of this provision is to protect general lawmaking and avoid damaging and prolonged uncertainty, and the potentially damaging unravelling of legislative effects, if a claim is made after a lengthy delay that, for example, a statutory instrument should not have been made by a junior Minister.

Subsection (11) has two effects. It makes clear that a judgment about legislation to which subsection (1) applies (which authorises a person to sign an instrument giving effect to a function conferred on another person) does not change or displace the general *Carltona* principle. The Supreme Court's judgment in *R v Adams* is such a judgment. So subsection (11) ensures that that decision could not form the basis for the disapplication of the *Carltona* principle in any future case. The other effect of the subsection is to remove any doubt that might arise about whether the draft clause itself qualifies or displaces the general *Carltona* principle, as it has generally been understood. The subsection does not purport exhaustively to codify that principle, but it does affirm it by implication, insofar as it assumes that the general rule, which is taken to hold unless expressly set aside, is that a function conferred on a Minister of the Crown in charge of a government department or on a department may be exercised or performed by any minister or official in the department as well as reaffirming the operation of that principle in the context of the long-standing doctrine of the "unity" of the office of the Secretary of State (under which any Secretary of State can act on behalf of another, except in the case of a function

conferred on a Secretary of State expressly identified by reference to a named department).

Subsection (12) avoids any risk of legal uncertainty that would arise from a simple consequential repeal of sections 46 and 47 (an uncertainty which did arise from the way the draft Northern Ireland Legacy Remedial Order was framed and section 16 of the Interpretation Act 1978) or about the law in the hiatus between the passing of the Legacy Act and the enactment of the proposed clause. It does this by specifying that the clause is to be taken to have effect from the time at which sections 46 and 47 of the Legacy Act 2023 came into force under section 63(2) of the 2023 Act (viz. 18 November 2023, two months after the 2023 Act was enacted) and to have been the law, instead of sections 46 and 47, in the meantime.

Subsection (13) defines various expressions used in the clause.

The compatibility of the draft enactment with Convention rights

The enactment we have outlined above would meet the Government's two objectives, which are to find a means to prevent compensation being paid to Gerry Adams and others and to reaffirm the *Carltona* principle. The enactment adopts a different approach from sections 46 and 47, although of course there are some points of overlap. That is unsurprising insofar as both are legislative responses to *R v Adams*, making provision to limit the same damaging effects of that decision. For that reason, it must be very likely that the enactment would be challenged on similar grounds to those advanced in *Fitzsimmons*. Those who would benefit from the undoing of sections 46 and 47 would argue that the legislation is an unfair retrospective interference in ongoing legal proceedings – or in proceedings yet to be brought – and is thus incompatible with Article 6 and A1P1.

For the reasons we give below, any legal challenge should fail and the prospect of such a challenge being mounted is not a reason for the Government to refrain from acting. Putting the point at its lowest, if Parliament enacts this new legislation and even if the courts were eventually to decide it is indistinguishable for the purposes of Convention rights from sections 46 and 47, the Government would in effect still have legitimately provided itself with an opportunity to pursue the strong grounds that it had for appealing against *Fitzsimmons*, an appeal that it wrongly abandoned in July 2024 for reasons it has never explained. Its concessions in that case would not prevent it from legislating in the way we propose.

Moreover, the Government would be well advised, if it needs to defend the proposed new legislation, to supplement any argument based on differences between this new legislation and sections 46 and 47, to persist in asserting that Parliament was justified in thinking that *R v Adams* was wrongly decided, because it misinterpreted the 1972 Order. This would be completely unobjectionable given that the Northern Ireland courts held (wrongly we think) that only the Supreme Court could decide whether Parliament was justified in thinking that *R v Adams* was wrongly decided – because the lower courts were bound by precedent to find that the judgment was rightly decided, even in proceedings concerning legislation enacted to reverse it.

But more generally, the Government should accept that the legislation we propose is compatible with Convention rights.

In asking himself whether he can make a section 19(1)(a) statement (that in his opinion the legislation is compatible with Convention rights), the Secretary of State should be confident that the Supreme Court would be at least more likely than not to find that the legislation is compatible. The question is not whether the legislation can be squared with the Northern Ireland High Court's judgment in *Fitzsimmons*. Neither that judgment, nor the Court of Appeal's obiter remarks in its September 2024 judgment, have any bearing on whether the Supreme Court – or the European Court of Human Rights, if the matter were taken to Strasbourg – would find the legislation compatible.

In any case, the declaration of incompatibility made by the High Court in *Fitzsimmons* was expressly limited to the claimant's rights, and thus to particular features of Mr Fitzsimmons' situation, and the Court did not purport to settle whether the legislation was generally incompatible with Convention rights.

In addition, the High Court's reasoning in *Fitzsimmons* does not decide or imply that our draft enactment would be incompatible. It is important to recall that the High Court had reasoned that sections 46 and 47 had nothing to do with the *Carltona* principle and that these two provisions were instead narrowly focused on stripping the fruits of litigation from Gerry Adams and others, which the Court held was unfairly and unjustifiably retrospective.

Again, this was a wholly unconvincing analysis which the Supreme Court should have been given an opportunity to consider and reject. However, the draft enactment we propose avoids the High Court's critique because it is differently framed from sections 46 and 47 and is, instead, clearly concerned to restate, in general terms, the way in which an enactment should be understood when it makes provision for a person to sign an instrument in connection with a power conferred on another. Relatedly, our proposed enactment sets out a general approach to the payment of compensation and the granting of other remedies in reliance on a challenge to the capacity of a signatory of an instrument. This is an approach that is targeted at three different reasons why payment of compensation etc would be unjust: (1) that the claim of invalidity is out of time by reference to the time when the fact by which it arose became known (making it impracticable to prove who other than the signatory made the decision), (2) that the claimed invalidity would have made no difference, and (3) that there was a separate and independent decision which makes the claim of invalidity beside the point. Sections 46 and 47 are not framed in this way.

Nothing in the Northern Ireland High Court's judgment requires an enactment of this kind to be regarded as incompatible with Article 6 or A1P1. In any case, the High Court's declaration of incompatibility was specific to sections 46 and 47 and, in accordance with the intended scheme of the Human Rights Act as enacted, cannot and does not prevent Parliament from enacting new legislation that aims to tackle the same problem but in a different way. Part of the High Court's reasoning in

Fitzsimmons, implausible though it may have been, was that Parliament had not sought to address the problematic consequences that *R v Adams* had for the meaning and application of the *Carltona* principle. New legislation that expressly addresses these consequences can scarcely be taken somehow to fall afoul of the High Court's earlier declaration.

Moreover, in terms of a traditional understanding of UK law, the draft enactment that we propose is not retrospective at all, except in so far as it mitigates the retrospection in sections 46 and 47 of the Legacy Act. First of all, it addresses the future interpretation of legislation passed before it takes effect. That is not retrospection.

The draft enactment's other provisions are directed at procedural elements of legal proceedings which (even if they have begun) have not yet reached the stage of determining the appropriate remedies, which is where the provision bites. In this way the clause is distinguishable from section 46 which (we would say justifiably) extinguished rights of action by retrospectively restating the law back to 1972. In UK jurisprudence, changes to future process, even in relation to pending proceedings, are not properly regarded as retrospective. Nor, for that reason, under English and Northern Irish law are changes to limitation periods, although ECHR jurisprudence might be expected to take a more civil law approach to that question – at least for Art 6 purposes. Any reliance on A1P1 seems impossible in relation to exclusively procedural provisions that do not affect the substance of the rights to which the procedure relates.

The draft clause focuses on the availability of remedies, which typically involve an element of assessment or the exercise of some other discretion. To that extent an entitlement to a remedy does not crystallise until that process has been completed and a change to the entitlement before the crystallisation should not be regarded as retrospective.

But, even if the application of the clause to pending proceedings or the practical effect of the clause on the 1970s detentions can be characterised as retrospective for Art 6 purposes, it is a retrospectivity that is justified precisely because it aims to restore the legislator's original intention, which the Supreme Court in *R v Adams* misunderstood, and which other courts following this judgment in relation to other enactments might also misunderstand.

The legislation is justified in limiting the payment of compensation and other remedies based on this misunderstanding because no one has a right to compensation or relief from the courts that the legislator's original intention and provision did not support. Legislative intervention was foreseeable in this case for all the reasons we gave in our critique of the Northern Ireland High Court's judgment. In addition, the enactment's limitation of compensation when the three conditions have not been met picks out a series of grounds on which retrospective denial of compensation and other remedies is justified, and indeed what fairness requires precisely because payment of compensation etc in any one of those cases would be unfair – something the Prime Minister and the Secretary of State have both tacitly understood and acknowledged in their search for a "legal"

mechanism to deny compensation to Gerry Adams and others in the same position.

In enacting this legislation, Parliament would not somehow be compounding any supposed wrong that the Northern Ireland High Court held had been done to Mr Fitzsimmons by virtue of the enactment of sections 46 and 47. Again, a declaration of incompatibility under section 4 of the Human Rights Act 1998 does not, prohibit Parliament from attempting to secure the same ends by different means, just as it does not prevent Government and Parliament from leaving the law unchanged.

Whether the legislation we suggest is compatible with Convention rights would fall to be considered in new proceedings seeking a different declaration. In enacting the legislation that we propose, Parliament would not be retrospectively interfering with Mr Fitzsimmons's original application to the Northern Ireland High Court for a declaration of incompatibility. Parliament would instead be making a new decision, prohibiting Mr Fitzsimmons and others, including Gerry Adams, from securing compensation for unlawful detention in circumstances where the enactment in question, the 1972 Order, should always have been understood to authorise signatories of an ICO to make an ICO without the Secretary of State's personal involvement and where (1) the challenge to the ICO was brought well out of time, (2) personal consideration would have made no difference, and (3) an independent and separate decision was made after the ICO that overtook its effect and rendered any initial invalidity irrelevant.

The draft enactment we propose, even if characterised as retrospective, is not unfairly retrospective. There are "compelling grounds of general interest" – to use the test set out in the Strasbourg Court's case law – for Parliament to enact such legislation in this context.

Parliament is entitled to respond to judgments that misinterpret its enactments with legislation that restores its original intentions. Parliament is also entitled to enact legislation with retrospective effect to prevent courts from misconstruing other enactments. In response to the Supreme Court's 2020 judgment, Parliament has good reason to clarify how an enactment should be read when it distinguishes between the person on whom a power is conferred and the person who may sign an instrument giving effect to its exercise.

The point of the clarification, as our draft enactment makes clear, not least in subsection (11), is to provide that, notwithstanding *R v Adams*, a person authorised to sign an instrument is authorised to exercise the power in question – as well as to confirm the more general interpretive rule that when a power is conferred on a Minister of the Crown it may be exercised in his name by others for whom he takes constitutional responsibility. This is a "compelling ground of general interest" that supports legislating in this way. It was not considered by the High Court in *Fitzsimmons*.

It follows too that Parliament, having decided that that is how its intentions should always have been understood, is perfectly entitled to rectify cases where the courts' different understanding of the law potentially

conferred an entitlement to compensation or some other remedy, and even more obviously so where the beneficiary of that entitlement did not in practical terms suffer any real detriment from the failure of any person to act compatibly with the court's different understanding of the law.

Parliament is equally entitled to rectify cases where the courts have allowed procedural arrangements – eg such as powers to relax a limitation period – to be wrongly exploited to make it possible to make a claim for compensation or any other remedy in such a case.

So, in the current context too, there are "compelling grounds of general interest" for Parliament to prevent compensation being paid (or other remedies granted), when (1) the claim to the compensation or other remedy is well out of time, so that, in fairness, it should have been brought much earlier, when evidence might have existed to rebut the basis on which it is brought and (2) where personal consideration by the Minister in charge of the department would have made no difference rendering, for example, the payment of more than nominal compensation effectively a windfall arising out of a technicality, and (3) where an independent, separate and superseding decision has been made, again rendering payment of compensation or the grant of any other remedy in respect of an earlier decision that did not directly authorise the detention that is relevant to the claim effectively a windfall arising out of a technicality.

It follows that Parliament is justified in accordance with the Strasbourg jurisprudence in responding legislatively in this case, where the courts have misapplied the law about when proceedings should be allowed to be brought out of time and where proceedings will at best address a technicality which had no practical effect save to produce an undeserved windfall.

All these points, which are severable, support legislating to prevent Gerry Adams and others from being awarded compensation or other remedies in reliance on *R v Adams*. Parliament has overwhelmingly strong reasons of fairness, as well as a sound justification based on its responsibility for protecting the integrity of the legal system, to intervene with new legislation and to prevent hundreds of proceedings that are grounded on a misinterpretation of legislation and that are out of time and meritless to proceed to the grant of a significant remedy.

If he decides not to confine himself to allowing sections 46 and 47 to remain in force, the Secretary of State should adopt the legislation we propose, or something based on a similar line of thought. In introducing such legislation to the House of Commons, he can be confident that he is able to make a section 19(1)(a) statement that the legislation is compatible with Convention rights.

The legislation is very likely to be challenged by Mr Fitzsimmons, Gerry Adams, or others similarly situated. But the Secretary of State, having good reasons to be confident that he has put forward legislation that is compatible with Convention rights, should assure the Parliament that he would appeal any declaration of incompatibility that the Northern Ireland courts might make all the way to the Supreme Court. For the reasons

outlined in this section, there is every reason to expect the Supreme Court to find that the new legislation is compatible with Convention rights.

Appendix: Government statements since 15 January 2015

We have set out below the seven debates during which the Government has addressed sections 46 and 47, related litigation, and its own legislative plans.

1. Legacy Discussions, 15 January 2025

Sir Julian Smith: The Secretary of State knows that I agree with many aspects of the repeal of the legacy Act, but the Policy Exchange report this week, as the newspapers have reported this morning, raises significant concerns about the repeal of sections 46 and 47. May I urge him to return to the previous cross-party position that we have to block compensation payments to terrorists such as Gerry Adams?

Hilary Benn: I have indeed seen that report. The problem is that the approach set out in the legacy Act has been found, in that respect and many others, to be unlawful. Of course we will continue, as the previous Government did, to see whether we can find a lawful way of dealing with the issue that the right hon. Gentleman has identified. That work will continue.

…

Alex Burghart: I would like to return to the question that has just been raised by the former Secretary of State for Northern Ireland, my right hon. Friend the Member for Skipton and Ripon (Sir Julian Smith). When the previous Government passed their legislation, the Labour party was in favour of the amendments made in another place that ruled out compensation to people such as Gerry Adams and others similarly detained in the 1970s. Why have the Government now changed their position?

Hilary Benn: The courts have found those clauses to be unlawful. The last Government passed legislation to enable terrorists to get immunity. The last Government passed legislation to deny people in Northern Ireland the right to bring civil claims, including against terrorists. The Conservative party has never apologised for doing both of those things. It is about time

that it did.

Alex Burghart: Let us return to the matter of Gerry Adams. I am sorry to say that I must correct the Secretary of State. The High Court found that those provisions of the legacy Act were unlawful, but it is well within the Secretary of State's power to appeal that judgment. He has dropped that appeal. I do not wish to teach the Secretary of State to suck constitutional eggs, but he will know full well that it is also within the sovereign power of this Parliament to give legal basis to the Carltona doctrine, which has been in place since the 1940s. Or would he rather pay compensation to Gerry Adams and people like him?

Hilary Benn: Nobody wants to see that. The Supreme Court judgment that ruled that the interim custody orders following internment were not lawfully put in place, in which the Carltona principle was much discussed, was in 2020. The last Government did nothing about that for three years, until they belatedly accepted an amendment in the House of Lords that has now been found to be unlawful. It is a complex and difficult question—the last Government found it difficult—but we will continue to follow the same path to see whether it is possible to discover a legal means of dealing with the problem that the hon. Gentleman has identified.

2. Prime Minister's Questions, 15 January 2025

Kemi Badenoch: … Now it turns out that his Government may write a cheque to compensate Gerry Adams. That is shameful.

Keir Starmer: Among that barrage of complete nonsense, there is one point that I need to address: the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, which will have been of real interest across the House. That Act was unfit, not least because it gave immunity to hundreds of terrorists and was not supported by victims in Northern Ireland—nor, I believe, by any of the political parties in Northern Ireland. The Court found it unlawful. We will put in place—*[Interruption.]* This is a serious point. We will put in place a better framework. We are working on a draft remedial order and replacement legislation, and we will look at every conceivable way to prevent these types of cases from claiming damages—it is important that I say that on the record.

3. Independent Commission for Reconciliation and Information Recovery, 16 January 2025

Lord Caine: My Lords, yesterday the Prime Minister promised that the Government would stop Gerry Adams receiving any compensation. Why, then, in July, did they so abruptly drop the appeal against the High Court judgment on the amendments I made to the legacy Bill that would have achieved just that and which Labour supported at the time? Was

the Advocate-General for Northern Ireland consulted before that decision was taken? Until publication yesterday of the Policy Exchange paper, what proposals of their own were the Government actively working on to remedy this situation?

Baroness Anderson of Stoke-on-Trent: I thank the noble Lord for his question. I think it would be helpful for people to appreciate what the Prime Minister actually said yesterday, which is that the legacy Act was "unfit, not least because it gave immunity to hundreds of terrorists and was not supported by victims in Northern Ireland—nor, I believe, by any of the political parties in Northern Ireland. The Court found it unlawful … We will put in place a better framework. We are working on a draft remedial order and replacement legislation, and we will look at every conceivable way to prevent these types of cases from claiming damages".

The objective in Sections 46 and 47 was right, which is why my party supported it in opposition. The method has been found to be unlawful and we are looking at every option for engagement. The noble Lord may be interested to look at the comments of the Appeal Court. Although we did not appeal, the court chose to comment and suggested that we would have failed in our appeal. I have the exact wording which I will send to the noble Lord.

4. Clonoe Inquest, 11 February 2025

Jim Allister: …This is a Secretary of State who wants to see IRA godfather Gerry Adams paid compensation because the wrong Minister signed his detention order 50 years ago. …

Hilary Benn: As I made clear at Northern Ireland questions recently, the Supreme Court issued a judgment on the interim custody orders relating to internment in 2020. The previous Government knew there was a problem and, for quite a long period of time, was unable to find a solution. In the end, the solution—sections 46 and 47 of the legacy Act—has been found to be unlawful, but I have given an undertaking from the Dispatch Box that we are looking at all lawful means to prevent compensation from being paid in those circumstances. I believe that we are taking the right approach to the legacy Act.

5. Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (Remedial) Order 2024, 26 February 2025

Baroness Anderson of Stoke-on-Trent: …I know that there has been a lot of controversy, as highlighted by the noble Lords, Lord Godson, Lord Faulks and Lord Caine, surrounding the proposed removal of Sections 46 and 47, on interim custody orders, from the legacy Act via remedial order. I will address that issue directly. The previous Government failed to

address it adequately following the 2020 Supreme Court judgment in R v Adams. The Government's belated attempt to do so via an amendment to the legacy Act in this House, in the name of the noble Lord, Lord Faulks, three full years after the judgment in R v Adams, has been found by the Northern Ireland courts to be unlawful.

…

Lord Faulks: As the noble Baroness pauses, I wonder whether she could help me by just clarifying one thing. I think I heard her say that the Government have come to the clear conclusion that it would be contrary to the European Convention on Human Rights to allow someone in Gerry Adams's position—or, rather, not to allow him—to proceed with his claim for damages because that would be against the convention. Is that the Government's position?

Baroness Anderson of Stoke-on-Trent: That is absolutely not the Government's position. The Government's position is clear, and the Secretary of State and the Prime Minister have been clear: we will find a lawful way to move forward. We are still consulting with lawyers on what that should be. As a lawyer, the noble Lord will know that that is not something that can be done overnight.

6. Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, 26 February 2025

Desmond Swayne: Why did the Secretary of State abandon the appeal in Dillon and Ors?

Hilary Benn: Because sections 46 and 47 of the Act were found to be unlawful, and, as the right hon. Gentleman will be aware, the case that gave rise to the attempt to deal with the problem through those sections that have now been found to be unlawful arose from a Supreme Court judgment in 2020. For two and a bit years, the last Government were unable to find a solution.

Gagan Mohindra: Notwithstanding the Secretary of State's response, may I ask why this Labour Government are continuing to undermine the tough action taken by the Conservative Government on individuals who have acted against our democracy and society, such as Gerry Adams, by considering repealing the Act, giving Adams and others the possibility of a six-figure payout?

Hilary Benn: As I said during the last Northern Ireland questions, no one wants to see that happen. We are currently working to find a lawful way of dealing with the problems that were created by the way in which the original interim custody orders were signed in 1972 and, I think, 1973. In

2020, the Supreme Court found that orders that had not been signed and considered by the then Secretary of State were not lawful.

…

Mike Wood: People throughout the United Kingdom will be disgusted if former terrorists such as *Gerry Adams* receive compensation from the taxpayer because of Labour's decision to repeal the legacy Act without putting something in its place. Will the Secretary of State finally commit himself to legislating immediately to prevent that from happening?

Hilary Benn: I refer the hon. Gentleman to the answer that I gave a moment ago.

7. Interim Custody Orders: Compensation, 21 May

Sir Desmond Swayne: Will the Secretary of State withhold the remedial order until he is certain that he can deliver the Prime Minister's pledge to prevent Gerry Adams from receiving compensation?

Hilary Benn: The Government are currently considering the report of the Joint Committee on Human Rights and the representations made to it.

…

Alex Burghart: In his opening remarks, the Secretary of State left out one crucial detail: the truth is that the last Government did legislate with cross-party support to prevent people like Gerry Adams from receiving taxpayer-funded compensation. The High Court in Northern Ireland ruled that that was incompatible with the European convention on human rights, and the Conservative Government then appealed that judgment. When the Labour party came to power last summer, it dropped that appeal. Will the Secretary of State please set out why the Government decided to drop that appeal?

Hilary Benn: As I told the House a moment ago, the courts found that clauses 46 and 47 were unlawful. Although the Northern Ireland Court of Appeal was not obviously asked to rule on that, because we had withdrawn the appeal, it did comment unfavourably on those provisions. We supported clauses 46 and 47 at the time, but they have not worked, and that is why we have to find an alternative way forward. I just say to the House that the main issue here is the Carltona principle, which the last Government argued meant it was lawful for junior Ministers to sign ICOs. The amendment to try to deal with that failed, and we need to find another way of reaffirming that principle. That is at the heart of this case.

Alex Burghart: The whole House will have heard the Secretary of State not give a reason why the Government did not continue the appeal.

Government lawyers told the last Government that there were grounds for appeal. Policy Exchange, in a report in January written by Professor Richard Ekins and Sir Stephen Laws, said that the High Court had almost certainly been "mistaken" in its judgment and that there were strong grounds for an appeal. Why did the Government drop it, and why have the Government not yet brought forward their own legislation to clear this mess up once and for all?

Hilary Benn: The Supreme Court judgment was in 2020, and the last Government could not find a legal solution in almost three years. I am committed to finding one, and I promise that I will update the House when we have found it.

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