



Independent Commission for Reconciliation and Information Recovery

Approach to Section 14 Notices and
Compliance – Public Policy Statement

18 October 2024

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Introduction

1. This document summarises the Independent Commission for Reconciliation and Information Recovery (“the Commission”)’s policy and processes relating to section 14 of the Northern Ireland Troubles Act¹.
2. Section 14 of the Act (for the purposes of, or in connection with the exercise of the review function²), gives the Commissioner for Investigations (CfI) the power to issue a notice requiring a person to:
 - a) Attend at a time and place (stated in the notice) to provide information, produce any documents or any other things in their possession or control³.
 - b) Provide evidence in the form of a written statement, provide any documents or any other things in their possession or control within a reasonable period to the Commission. What period is considered reasonable is decided by the CfI⁴.
3. In relation to section 14, a person may be a private individual, a body corporate, a partnership or an unincorporated association or body⁵.
4. The person on whom a notice is served must comply with it and will be made aware by the Commission of the possible consequences of not complying with it. A person may make a claim that they are unable to comply with the notice or that it is not reasonable to require them to comply with the notice⁶. In this situation, the CfI may decide that a notice can be revoked (withdrawn), varied (changed) or maintained (left unchanged).
5. Under Schedule 4 to the Act, the Commission may require a person to pay a penalty of up to £5,000 if the Commission is satisfied that the person has failed to comply with a notice without reasonable excuse (para 1 Sch 4).
6. Where a person distorts or alters any evidence, document or item that is provided to the CfI or prevents any such information from being provided to the CfI under section 14, then a person is guilty of an offence (para 8 Sch 4). Where a person intentionally alters, destroys, suppresses, or conceals evidence that the person knows or believes to be a

¹ [Northern Ireland Troubles \(Legacy and Reconciliation\) Act 2023 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2023/12/section/14)

² Section 2 (5)

³ Section 14 (2)(a-c)

⁴ Section 14 (3) (a-c)

⁵ Schedule 4, Paragraph 6(2)

⁶ Section 14(5)

relevant document then they are also guilty of an offence⁷. These offences are punishable with a fine up to £1000 (level 3 on the standard scale) wherever in the UK it is committed or to a term of imprisonment of up to 12 months, depending on where in the UK it is committed⁸.

The section 14 process

7. Normally, the Commission will aim to ask for and obtain the requested information or statement from the person voluntarily before considering issuing a formal section 14 notice.
8. In such cases, the Commission will write to the person and explain the role of the Commission, the information required (including explaining that it is a criminal offence to destroy any relevant information) and offer the opportunity to discuss the voluntary request further.
9. The initial contact will be followed up with a phone call from the Commission to understand whether the person has decided to engage voluntarily with the Commission or not, and if so why.
10. If a person decides not to engage with a request to provide information voluntarily, the Commission will consider whether to issue a section 14 notice or not.
11. If a section 14 notice is issued it will, where appropriate, explain the Commission's earlier attempts to request the information on a voluntary basis.
12. The Commission will take a proportionate and case-by-case approach when deciding whether to proceed with a section 14 notice or not. The decision to do so will be balanced with wider considerations such as the commitment to information recovery alongside taking a trauma and resiliency informed approach. The Commission's aim is to avoid, where possible and appropriate, the need to issue notices as part of a strict enforcement regime and instead will work closely with those involved to encourage voluntary engagement.

Issuing a notice

13. A notice will be issued by the Cfl via a letter sent to the person explaining:
 - a) The information, documents, or other thing the Commission is asking for.
 - b) What will happen if the person does not comply with the request for the information.
 - c) What a person should do if they want to claim that they are unable to comply with a notice, or it is not reasonable to require them to comply with the notice.

⁷ Schedule 4, Paragraph 9(1)

⁸ of Schedule 4, Part 2 Paragraph 11 (1)

- d) The timeframe within which the information or statement must be provided and, if relevant, the time and place where the person should attend to provide the information or produce the document or other thing.
- e) A named point of contact at the Commission to speak with about the notice.

14. Where a person is required to attend at a time and place to provide information, the notice may also explain that the information is to be provided orally in response to questions and may provide a description of the matters or issues to be covered in any such questions.

Claims to revoke (withdraw) or vary (change) a notice

15. Anyone who receives a notice can tell the Commission that they cannot comply with the notice or that it is not reasonable for them to comply with the notice. The Cfl will then decide whether to revoke (withdraw), vary (change) or maintain (leave unchanged) the notice.
16. When doing this, the Cfl must consider the public interest in obtaining the information requested and how important the information is.
17. A relevant authority⁹ can claim that the Commission would breach section 4(1) (a) or (b) of the Act (which states that the Commission must not do anything which would risk, or would prejudice national security risk, or put the life or safety of anyone at risk) if the person given the notice was required to comply with it, but that there would not be a breach of section 4(1)(a) or (b) if the relevant authority were to nominate a different person to comply with the notice.
18. All such claims made will be considered on a case-by-case basis by the Cfl who will inform, in writing, the person subject to the notice (and the relevant authority) if the notice has been revoked (withdrawn) or varied (changed) as a result.

Failure to comply with a notice and issuing a penalty

19. Failure to comply with a notice means that, on the balance of probabilities, the Commission is satisfied that a person has failed to do anything the person is required to do by a notice under s14, such as:
- a) Not responding to a notice.
 - b) Failing or refusing to attend at a specified time and place to provide all the information, documents or other things requested in the notice; or
 - c) Failing or refusing to provide all the evidence in the form of a statement or all the information, documents and any other thing requested within a reasonable time as set out in the notice.

⁹ As defined in Section 60(1) of the Act

20. Under Schedule 4 to the Act, the Commission may require a person to pay a penalty of up to £5,000, when they have failed to comply with a notice, and they do not have a reasonable excuse for their failure.
21. If it is decided a penalty is payable, the Commission must issue a penalty notice. When issuing a penalty, the Commission will write by letter to the person, stating:
- a) The amount of the penalty and the date on which it is given.
 - b) The Commission's reasons for the penalty.
 - c) The date (at least 28 days after the date on which the notification is given) before which the penalty must be paid.
 - d) How the penalty must be paid.
 - e) The steps that the person may take regarding objections to the penalty notice.
 - f) The steps the Commission may take to recover any unpaid penalty.
 - g) A named contact at the Commission.

Determining the level of a penalty

22. The Commission will consider the following non-exhaustive factors when deciding the level of penalty.
- a) The impact on an investigation of the failure to comply with the request.
 - b) The degree to which a certain level of penalty is required to achieve a deterrent effect.
 - c) The reasonableness of the penalty given the person's circumstances.
 - d) Whether the person has responded to or engaged with the Commission in response to a notice (with the intention of applying a higher penalty for those who have ignored a notice).
 - e) Whether there are any benefits gained for the person by not responding or complying with a notice.
 - f) Whether the Commission considers that the failure to comply is deliberate.
 - g) Whether the person has previously been issued with a penalty in relation to a notice (with the intention that repeated instances of non-compliance will result in a higher penalty).
 - h) Whether the grounds for application to vary a notice are made in bad faith (and should therefore attract a higher penalty).
 - i) Whether the person has provided a partial response.

Objections to penalties

23. A person subject to a penalty can object to it within 28 days of the date specified in the penalty notice as the date on which the notice was given. When the Commission receives an objection, it has up to 70 days from the date on which the notice was given to decide whether to cancel the penalty, reduce the penalty, increase the penalty or decide not to alter the penalty. The Commission will notify the person of this decision in writing.

Appeals against penalties

24. Following the outcome of an objection, the person may appeal the penalty in the County Court (or to a sheriff in Scotland) within 28 days of the date on which the person is notified of the outcome of the objection.

Payment of penalties

25. Penalties must be paid to the Commission. The Commission will pay all monies received into the Consolidated Fund.

Offences relating to a section 14 notice

26. A person is guilty of an offence if they do anything that is intended to have the effect of:

- a) Distorting or otherwise altering any evidence, document or other thing that is produced or provided to the Cfl in accordance with a notice under Section 14;
- b) Preventing any evidence, document or other thing from being produced or provided to the Cfl in accordance with a notice under Section 14; and/or
- c) Intentionally suppressing or concealing, or intentionally altering or destroying a document that is, and the person knows or believes it to be, a relevant document.

27. A person who is guilty of such an offence is liable, on summary conviction, to a fine not exceeding level three on the standard scale (a level 3 fine is £1,000) or to imprisonment for a term not exceeding the relevant maximum for the different parts of the United Kingdom, or to both.

28. In this case, the “relevant maximum” is as follows:

- a) Northern Ireland – six months
- b) England and Wales – 51 weeks
- c) Scotland – 12 months.

29. Individuals committing an offence can be prosecuted only by, or with the consent of, the relevant Director of Public Prosecutions for the different parts of the United Kingdom.

Monitoring the use of the section 14 power

30. The Commission is committed to equality and ensuring that the application of section 14 notices is conducted in a fair, transparent, and non-discriminatory manner, in accordance with section 75 of the Equalities Act.

31. The Commission recognises the importance of monitoring the use of section 14 notices from an equality perspective to ensure that they do not disproportionately affect individuals or communities based on their protected characteristics, including but not limited to gender, race, ethnicity, disability, religion, and sexual orientation.
32. Therefore, the Commission will monitor its use of the section 14 power, providing a summary in its annual report of the number of notices served, revoked (withdrawn), varied (changed) and not complied with, alongside the number of penalties issued, objected to, and appealed. It will also provide information on the number of offences related to schedule 4 part 2.
33. In addition to monitoring the overall use of section 14 powers, the Commission will, where possible, also include in its annual report a summary of demographic data related to individuals subject to section 14 notices. This summary will include information on compliance rates, penalties issued, objections raised, and appeals lodged, broken down by relevant demographic characteristics.
34. This commitment to equality monitoring aims to identify and address any disparities in the application of section 14 notices.

Continuous review and improvement

35. The Commission will ensure that provision is made available to individuals and organisations affected by section 14 notices in terms of providing information in other accessible formats, such as large print, Braille, audio cassette and a variety of relevant minority languages if required.
36. The Commission is committed to continuous review and improvement of its section 14 procedures and will regularly evaluate the effectiveness and fairness of this process, as well as asking for feedback to help in continuously improving its process. The Commission will welcome feedback from those involved in the section 14 process as well as engaging with stakeholder groups.

Principal Objective

37. Section 2(4) states that the Commission's principal objective in exercising its functions is to promote reconciliation. In developing this approach, and in exercising the related functions, the Commission is committed to conscientiously considering how the promotion of reconciliation is impacted.