

PARLIAMENTARY BUREAU

LEGISLATIVE CONSENT MEMORANDUM - NORTHERN IRELAND TROUBLES (LEGACY AND RECONCILIATION) BILL (UK LEGISLATION)

Introduction

1. Under Rule 9B.3.5, the Parliamentary Bureau is required to refer any legislative consent memorandum (LCM) that has been lodged with the Parliament to the committee within whose remit the subject matter of the relevant provision falls.

Northern Ireland Troubles (Legacy and Reconciliation) Bill

2. The Northern Ireland Troubles (Legacy and Reconciliation) Bill was introduced in the House of Commons on 17 May 2022.

3. An LCM was lodged by Keith Brown MSP, Cabinet Secretary for Justice and Veterans, on 20 October 2022.

4. The Explanatory Notes accompanying the Bill describe the principal legislative measures of the Bill as follows:

- To establish a new independent body, the Independent Commission for Reconciliation and Information Recovery (ICRIR). When requested to do so, this body will conduct investigations into deaths and very serious injuries which resulted from conduct forming part of the Troubles. In each case, the body will compile and publish a report of its findings. The ICRIR may also open an investigation into a death or very serious injury if an individual comes forward seeking immunity (see below) in relation to that specific death or injury, if it does not already have a live investigation ongoing. State bodies and agencies will be under a duty to give the ICRIR full disclosure of all relevant material that is reasonably required for it to fulfil its functions. The ICRIR will also produce a historical record of all remaining deaths (those in relation to which a request is not made) that occurred during the Troubles.
- To require designated persons to carry out a programme of memorialisation work, including an oral history initiative. The aim is to provide a central place for people of all backgrounds to share their experiences and perspectives relating to the Troubles. The designated persons will also produce an evidence-based report within one year which will make a set of concrete recommendations for structures and initiatives to memorialise the Troubles.
- To introduce a conditional immunity scheme, allowing those who cooperate with the ICRIR to receive immunity from prosecution for offences resulting in or connected with Troubles-related deaths and serious injuries. The ICRIR will be under a duty to grant immunity where certain conditions are met. In the event immunity is not granted to an individual, the ICRIR can continue its investigation and if the evidence permits, produce a file for prosecution which will be submitted to the relevant prosecutor. Individuals will be able to apply for immunity for conduct related to any relevant case where a decision to

prosecute is yet to be made by prosecutors. Any cases where a decision to prosecute has been made will continue and it will not be possible for individuals to seek immunity.

- To bar investigations into Troubles related incidents by any organisation other than the ICIR, and bar prosecutions for Troubles-related offences not involving death or serious injury, or which are not connected to offences involving death or serious injury.
- To bar civil claims arising from conduct forming part of the Troubles and events between 1 January 1966 and 10 April 1998, where a claim has yet to be filed by the date of the Bill's introduction. Those before the Bill's introduction will continue.
- To provide that inquests which have not yet reached the stage of a substantive hearing by the 1 May 2023 or the date on which the ICIR becomes operational (whichever comes first) will be stopped, but can be referred by families or coroners to the ICIR for investigation.

5. The LCM indicates that the Scottish Government intends not to lodge a motion seeking the Scottish Parliament's consent to the UK Parliament legislating on devolved matters in this Bill. This is due to concerns about the changes being made to the functions and responsibilities of the Lord Advocate, the concerns expressed by others about the ECHR compatibility of the Bill and the belief that the Bill is "incompatible with the Scottish Government's views that those who have suffered during the Troubles are able to obtain justice and that those who committed offences during that time are appropriately held to account/punished".

Designation of lead committee

6. The devolved matters in the Bill relate to the investigation of deaths and harmful conduct, criminal justice, civil justice, and Fatal Accident Inquiries. As such, the LCM engages the remit of two committees.

- The remit of the Criminal Justice Committee includes "*to consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Veterans*".
- The remit of the Equalities, Human Rights and Civil Justice Committee includes "*to consider and report on matters relating to civil justice falling within the responsibility of the Cabinet Secretary for Justice and Veterans*".

7. As the matters contained in the Bill fall within the remit of both criminal justice and civil justice (for example, relating to both criminal investigations and civil claims), both of these remits are engaged. It is considered that the Criminal Justice Committee has the primary interest in the Bill.

8. The LCM will also be considered by the Delegated Powers and Law Reform Committee in regard to any provisions in the Bill conferring powers on the Scottish Ministers to make subordinate legislation.

Recommendation

9. The Bureau is invited to consider recommending to the Parliament by motion that it agrees, under Rule 9B.3.5, to designate the Criminal Justice Committee as the lead committee to consider and report on the LCM.

10. A draft motion is provided below.

Parliamentary Business Team
27 October 2022

Draft Parliamentary Bureau motion on the Northern Ireland Troubles (Legacy and Reconciliation) Bill (UK Legislation):

Designation of Lead Committee – That the Parliament agrees that the Criminal Justice Committee be designated as the lead committee in consideration of the legislative consent memorandum in relation to the Northern Ireland Troubles (Legacy and Reconciliation) Bill (UK Legislation).